

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001
(Committee on Appropriations)

LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose of defraying the expenses thereof, for the fiscal period beginning with the effective date of this Act and ending June 30, 1989, as follows:

Subdivision 1.

FIFTIETH AND FIFTY-FIRST LEGISLATIVE ASSEMBLIES AND BIENNIUM	
Salaries and wages	\$3,300,733
Operating expenses	1,469,105
Equipment	32,640
National conference of state legislatures	90,628
Total general fund appropriation	\$4,893,106

Subdivision 2.

LEGISLATIVE COUNCIL	
Salaries and wages	\$2,246,165
Operating expenses	1,298,562
Equipment	11,087
Total general fund appropriation	\$3,555,814
Grand total general fund appropriation	\$8,448,920

SECTION 2. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or his designee upon the finding by the chairman or his designee that the nature of studies and duties assigned to the council requires such transfers in properly carrying on the

council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fiftieth and fifty-first legislative assemblies, upon request of the chairman of the legislative council or his designee upon the finding by the chairman or his designee that such transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 13, 1987
Filed April 14, 1987

CHAPTER 2

HOUSE BILL NO. 1002
(Committee on Appropriations)

JUDICIAL BRANCH

AN ACT making an appropriation for defraying the expenses of the judicial branch of the government of the state of North Dakota; to amend and reenact section 27-05-01 of the North Dakota Century Code, relating to the number of district court judges; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the judicial branch of government of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$ 3,421,509
Operating expenses	845,000
Data processing	78,000
Equipment	74,949
Judges retirement	188,440
Total all funds	\$ 4,607,898
Less estimated income	55,000
Total general fund appropriation	\$ 4,552,898

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$10,722,584
Operating expenses	3,640,360
Equipment	97,021
Judges retirement	674,978
Total all funds	\$15,134,943
Less estimated income	340,000
Total general fund appropriation	\$14,794,943

Subdivision 3.

JUDICIAL CONDUCT COMMISSION
AND DISCIPLINARY BOARD

Salaries and wages	\$ 149,280
Operating expenses	93,968
Equipment	<u>2,500</u>
Total all funds	\$ 245,748
Less estimated income	<u>60,000</u>
Total general fund appropriation	\$ 185,748
Grand total general fund appropriation H.B. 1002	\$19,533,589
Grand total special funds appropriation H.B. 1002	\$ 455,000
Grand total all funds appropriation H.B. 1002	\$19,988,589

SECTION 2. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriation for the judicial branch of government as may be requested by the supreme court upon a finding by the court that the nature of the duties of the court and its staff requires such transfers to carry on properly the functions of the judicial branch of government.

SECTION 3. AMENDMENT. Section 27-05-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-01. Judicial districts - Number of judges. The judicial districts in this state are as designated by rule of the supreme court. The number of judges in each of the judicial districts is as follows:

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

SECTION 4. District judges. The appropriation provided within subdivision 2 of section 1 provides for one additional district court judge to be assigned pursuant to section 10 of article VI of the Constitution of North Dakota in the northeast central judicial district, and to be assigned to chambers by the supreme court. Within thirty days after January 1, 1989, the governor shall, pursuant to chapter 27-25, as amended, give written notice of the district court judgeship vacancy created by this section.

SECTION 5. EFFECTIVE DATE. Section 3 of this Act becomes effective on January 1, 1989.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 3

HOUSE BILL NO. 1003
(Committee on Appropriations)

BOARD OF HIGHER EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the state board of higher education and the various institutions of higher learning under the supervision of the state board of higher education; to provide legislative intent regarding student financial assistance grants, membership in the university center for atmospheric research, and use of the higher education board pool; to create and enact a new section to chapter 15-11 of the North Dakota Century Code, relating to the supervision of the junior college located at Devils Lake; to amend and reenact subsections 4 and 6 of section 15-10-01, subdivision d of subsection 13 of section 15-10-17, and section 15-13-01 of the North Dakota Century Code, relating to the names of the institutions of higher education at Devils Lake, Dickinson, Mayville, Minot, and Valley City; to repeal section 15-55-21 of the North Dakota Century Code, relating to the payment of expenses from the gross revenues of higher education revenue bond projects; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the state board of higher education and to the various institutions of higher learning under the supervision of the state board of higher education for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

STATE BOARD OF HIGHER EDUCATION

Salaries and wages	\$	882,074
Operating expenses		320,032
Data processing		48,665
Equipment		11,000
Reciprocal agreements		2,541,800

National direct student loans	125,245
Title II grant	192,000
Merit scholarship program	155,000
Student financial assistance grants	1,500,000
Board pool	265,000
Total all funds	<u>\$ 6,040,816</u>
Less federal funds	592,000
Total general fund appropriation	<u>\$ 5,448,816</u>

Subdivision 2.

BISMARCK STATE COLLEGE

Salaries and wages	\$ 10,125,278
Operating expenses	2,402,027
Equipment	272,700
Capital improvements	204,845
Total all funds	<u>\$ 13,004,850</u>
Less budget adjustment	194,292
Less estimated income	7,177,417
Total general fund appropriation	<u>\$ 5,633,141</u>

Subdivision 3.

NORTH DAKOTA STATE COLLEGE OF SCIENCE - DEVILS LAKE

Salaries and wages	\$ 2,605,599
Operating expenses	856,628
Equipment	83,021
Capital improvements	101,921
Total all funds	<u>\$ 3,647,169</u>
Less budget adjustment	61,739
Less estimated income	1,852,741
Total general fund appropriation	<u>\$ 1,732,689</u>

Subdivision 4.

UNIVERSITY OF NORTH DAKOTA - WILLISTON

Salaries and wages	\$ 3,285,373
Operating expenses	808,646
Equipment	116,685
Capital improvements	69,439
Total all funds	<u>\$ 4,280,143</u>
Less budget adjustment	65,474
Less estimated income	2,305,995
Total general fund appropriation	<u>\$ 1,908,674</u>

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Salaries and wages	\$ 66,515,795
Operating expenses	18,920,634
Equipment	1,466,770
Capital improvements	1,467,265
Total all funds	<u>\$ 88,370,464</u>
Less budget adjustment	2,132,064
Less estimated income	27,363,039
Total general fund appropriation	<u>\$ 58,875,361</u>

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY
OF AGRICULTURE AND APPLIED SCIENCE

Salaries and wages	\$ 57,983,724
Operating expenses	16,238,446
Equipment	1,353,031
Capital improvements	<u>1,415,027</u>
Total all funds	\$ 76,990,228
Less budget adjustment	1,813,745
Less estimated income	<u>24,212,487</u>
Total general fund appropriation	\$ 50,963,996

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Salaries and wages	\$ 18,838,342
Operating expenses	5,284,135
Equipment	718,864
Capital improvements	<u>410,700</u>
Total all funds	\$ 25,252,041
Less budget adjustment	632,292
Less estimated income	<u>6,703,725</u>
Total general fund appropriation	\$ 17,916,024

Subdivision 8.

STATE UNIVERSITY OF NORTH DAKOTA - DICKINSON

Salaries and wages	\$ 8,852,950
Operating expenses	2,781,252
Equipment	139,186
Capital improvements	<u>150,263</u>
Total all funds	\$ 11,923,651
Less budget adjustment	299,852
Less estimated income	<u>3,080,372</u>
Total general fund appropriation	\$ 8,543,427

Subdivision 9.

STATE UNIVERSITY OF NORTH DAKOTA - MAYVILLE

Salaries and wages	\$ 5,894,888
Operating expenses	1,764,224
Equipment	86,175
Capital improvements	<u>104,533</u>
Total all funds	\$ 7,849,820
Less budget adjustment	208,455
Less estimated income	<u>1,783,749</u>
Total general fund appropriation	\$ 5,857,616

Subdivision 10.

STATE UNIVERSITY OF NORTH DAKOTA - MINOT

Salaries and wages	\$ 18,233,521
Operating expenses	2,946,282
Equipment	299,678
Capital improvements	<u>339,553</u>
Total all funds	\$ 21,819,034
Less budget adjustment	496,958
Less estimated income	<u>7,374,289</u>
Total general fund appropriation	\$ 13,947,787

Subdivision 11.

STATE UNIVERSITY OF NORTH DAKOTA - VALLEY CITY	
Salaries and wages	\$ 7,779,683
Operating expenses	2,016,152
Equipment	113,163
Capital improvements	191,891
Total all funds	<u>\$ 10,100,889</u>
Less budget adjustment	257,850
Less estimated income	<u>2,461,612</u>
Total general fund appropriation	\$ 7,381,427

Subdivision 12.

NORTH DAKOTA STATE UNIVERSITY - BOTTINEAU	
Salaries and wages	\$ 2,962,161
Operating expenses	715,047
Equipment	70,329
Capital improvements	94,246
Total all funds	<u>\$ 3,841,783</u>
Less budget adjustment	94,740
Less estimated income	<u>1,007,977</u>
Total general fund appropriation	\$ 2,739,066

Subdivision 13.

NORTH DAKOTA STATE UNIVERSITY - STATE TOXICOLOGIST	
Salaries and wages	\$ 458,668
Operating expenses	99,160
Equipment	18,000
Total all funds	<u>\$ 575,828</u>
Less budget adjustment	15,073
Less estimated income	<u>120,000</u>
Total general fund appropriation	\$ 440,755

Subdivision 14.

NORTH DAKOTA FOREST SERVICE	
Salaries and wages	\$ 1,244,306
Operating expenses	340,978
Equipment	56,035
Capital improvements	30,100
Total all funds	<u>\$ 1,671,419</u>
Less budget adjustment	32,722
Less estimated income	<u>661,367</u>
Total general fund appropriation	\$ 977,330

Subdivision 15.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER	
Salaries and wages	\$ 36,849,940
Operating expenses	12,799,820
Equipment	715,068
Psychiatric nursing	436,000
Total all funds	<u>\$ 50,800,828</u>
Less budget adjustment	1,006,008
Less estimated income	<u>21,604,127</u>
Total general fund appropriation	\$ 28,190,693

Subdivision 16.

MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	\$ 13,443,965
Operating expenses	5,058,009
Equipment	208,191
Total appropriation from institutional income	<u>\$ 18,710,165</u>
Grand total general fund appropriation H.B. 1003	\$211,918,191
Grand total special funds appropriation H.B. 1003	\$127,011,062
Grand total all funds appropriation H.B. 1003	\$338,929,253

SECTION 2. APPROPRIATION TRANSFER. The board pool in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 14 of section 1 as determined by the state board of higher education. The board shall notify the office of management and budget of the allocation of general fund authority from the board pool, to the various institutions and which line items in the various institutions and entities shall be adjusted.

SECTION 3. APPROPRIATION. There are hereby appropriated any funds received by the board of higher education, not otherwise appropriated, pursuant to federal acts and private grants for the purpose as designated in such federal acts or private grants for the period beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,361,389, or so much thereof as may be necessary, to the state board of higher education to provide for matching commitments for the national science foundation experimental program to stimulate competitive research for the biennium beginning July 1, 1987, and ending June 30, 1989. The board of higher education shall allocate these funds as necessary to North Dakota state university and the university of North Dakota.

SECTION 5. ADDITIONAL INCOME. Any additional income not required by law to be deposited in operating funds in the state treasury is hereby appropriated. All income in excess of estimated income in the budget appropriated by the legislative assembly to the institutions of higher learning must be deposited in their respective operating funds in the state treasury and is hereby appropriated and can be spent only upon authorization of the emergency commission.

SECTION 6. TRANSFER. The state board of higher education may make such transfers between line items in subdivision 1 of section 1, other than reciprocal agreements and student financial assistance grants, as may be necessary and manageable to provide for board or institutional budget requirements. The board shall notify the office of management and budget of each transfer.

SECTION 7. TRANSFERS. Each institution or agency included in subdivisions 2 through 16 of section 1, upon approval of the

state board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board for operations of the institution or agency. Each institution or agency shall notify the office of management and budget of each transfer.

SECTION 8. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed. If for any reason any specific appropriation for any item is held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, the holding does not affect or apply to the remaining items of appropriation in this Act or purposes provided for in this Act.

SECTION 9. REPORTS TO OFFICE OF MANAGEMENT AND BUDGET. Each institution included in this Act, upon approval by the state board of higher education, shall notify the office of management and budget of the line item reductions totaling the amount in the less budget adjustment line for each appropriation included in this Act and the office of management and budget shall reduce each line item accordingly. Notification must be given to the office of management and budget by June 15, 1987.

SECTION 10. LEGISLATIVE INTENT - STUDENT FINANCIAL ASSISTANCE GRANTS. It is the intent of the legislative assembly that the student financial assistance grants line item in subdivision 1 of section 1 be used for students determined to be in substantial need of financial assistance and eligible in accordance with North Dakota Century Code section 15-62.2-01.

SECTION 11. LEGISLATIVE INTENT - UNIVERSITY CENTER FOR ATMOSPHERIC RESEARCH MEMBERSHIP. It is the intent of the legislative assembly that the university of North Dakota seek membership in the university center for atmospheric research program during the 1987-89 biennium for the purpose of becoming eligible for additional national science foundation grants.

SECTION 12. LEGISLATIVE INTENT - HIGHER EDUCATION BOARD POOL - NORTH DAKOTA STATE COLLEGE OF SCIENCE - DEVILS LAKE. It is the intent of the legislative assembly that a portion of the pool money appropriated to the board of higher education be used to increase the salaries of the faculty at North Dakota state college of science - Devils Lake to a level halfway between their current level and the average of the state junior college salaries.

SECTION 13. AMENDMENT. Subsection 4 of section 15-10-01 of the 1985 Supplement to the North Dakota Century Code and subsection 6 of 15-10-01 of the North Dakota Century Code as contained in section 1 of House Bill No. 1300, as approved by the fiftieth legislative assembly, are hereby amended and reenacted to read as follows:

4. The state normal schools and teachers colleges at Valley City state university, Mayville state university, Minot state university, and Dickinson state university.
6. The following junior colleges and off-campus educational center: Bismarck state college, university of North Dakota - Lake Region community college, and the university of North Dakota - Williston center.

SECTION 14. AMENDMENT. Subdivision d of subsection 13 of section 15-10-17 of the North Dakota Century Code as contained in House Bill No. 1300, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

- d. Employees of Bismarck state college and university of North Dakota - Lake Region community college coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect prior to July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of the above-named colleges who becomes a member of the alternate retirement program may elect prior to July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2.

SECTION 15. A new section to chapter 15-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Supervision of the junior college located at Devils Lake. The junior college located at Devils Lake is a branch of the university of North Dakota subject to the supervision of the administrative authorities of the university of North Dakota in compliance with chapter 15-18 regarding junior colleges and off-campus educational centers and is titled the university of North Dakota - Lake Region. The administrative authorities of the university of North Dakota shall adopt, subject to the rules the state board of higher education may establish, the necessary rules for the government of the university of North Dakota - Lake Region.

SECTION 16. AMENDMENT. Section 15-13-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-13-01. Normal schools - Location - Names. The state normal schools established at Valley City in the county of Barnes, at Mayville in the county of Traill, at Minot in the county of Ward, and at Dickinson in the county of Stark, and any other normal schools which that may be established by law, shall be are the normal schools of the state, and at such time as any such school shall offer curriculums leading to both the bachelor of science and bachelor of arts degrees, such school may be referred to as "state college", prefixed by the name of the applicable city. The name of the normal school at Valley City is Valley City state university, the name of the normal school at Mayville is Mayville state university, the name of the normal school at Minot is Minot state university, and the name of the normal school at Dickinson is Dickinson state university.

SECTION 17. REPEAL. Section 15-55-21 of the North Dakota Century Code is hereby repealed.

SECTION 18. EMERGENCY. Sections 13, 14, 15, and 16 of this Act are declared to be emergency measures and are in effect upon filing with the secretary of state or on a date specified in this Act.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 4

HOUSE BILL NO. 1004
 (Committee on Appropriations)

BOARD OF VOCATIONAL EDUCATION

AN ACT making an appropriation for defraying the expenses of the state board of vocational education of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board of vocational education of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 1,963,816
Operating expenses	452,452
Data processing	5,000
Equipment	14,000
Grants, benefits, and claims	14,749,720
Grants to post secondary institutions at Bismarck, Devils Lake, and Williston	3,876,566
State advisory council	<u>269,905</u>
Total all funds	\$21,331,459
Less estimated income	<u>7,801,197</u>
Total general fund appropriation	<u>\$13,530,262</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 24, 1987
 Filed April 27, 1987

CHAPTER 5

HOUSE BILL NO. 1005
(Committee on Appropriations)

EXTENSION DIVISION AND EXPERIMENT STATIONS

AN ACT making an appropriation for defraying the expenses of the cooperative extension division, the upper great plains transportation institute, and the experiment stations of North Dakota state university of agriculture and applied science; to provide a statement of legislative intent; to provide for a transfer from the lignite research fund; and to provide a contingent appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the cooperative extension division, upper great plains transportation institute and experiment stations of North Dakota state university of agriculture and applied science for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.		
COOPERATIVE EXTENSION DIVISION		
Salaries and wages		\$14,997,768
Operating expenses		3,196,905
Equipment		560,000
Total all funds		\$18,754,673
Less estimated income		<u>10,424,000</u>
Total general fund appropriation		\$ 8,330,673
Subdivision 2.		
EXTENSION DIVISION		
FOOD AND NUTRITION PROGRAM		
Salaries and wages		\$ 449,790
Operating expenses		46,800
Total special funds appropriation		\$ 496,590

Subdivision 3.

UPPER GREAT PLAINS
TRANSPORTATION INSTITUTE

Salaries and wages	\$ 412,217
Operating expenses	104,838
Equipment	<u>13,166</u>
Total all funds	\$ 530,221
Less estimated income	<u>274,777</u>
Total general fund appropriation	\$ 255,444

Subdivision 4.

NORTHERN CROPS INSTITUTE

Salaries and wages	\$ 412,222
Operating expenses	115,066
Equipment	<u>130,312</u>
Total all funds	\$ 657,600
Less estimated income	<u>183,676</u>
Total general fund appropriation	\$ 473,924

Subdivision 5.

MAIN EXPERIMENT STATION

Salaries and wages	\$25,956,976
Operating expenses	6,215,890
Equipment	1,835,585
Capital improvements	<u>545,000</u>
Total all funds	\$34,553,451
Less estimated income	<u>15,001,037</u>
Total general fund appropriation	<u>\$19,552,414</u>

Subdivision 6.

DICKINSON EXPERIMENT STATION

Salaries and wages	\$ 683,364
Operating expenses	426,548
Equipment	<u>39,450</u>
Total operating budget	\$ 1,149,362
Less estimated income	<u>286,535</u>
Net operating budget	\$ 862,827
Capital improvements	<u>12,500</u>
Total general fund appropriation	\$ 875,327

Subdivision 7.

CENTRAL GRASSLAND EXPERIMENT STATION

Salaries and wages	\$ 345,421
Operating expenses	329,983
Equipment	<u>118,645</u>
Total operating budget	\$ 794,049
Less estimated income	<u>153,136</u>
Net operating budget	\$ 640,913
Capital improvements	<u>5,000</u>
Total general fund appropriation	\$ 645,913

Subdivision 8.

HETTINGER EXPERIMENT STATION

Salaries and wages	\$ 325,157
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Operating expenses	181,558
Equipment	108,463
Total operating budget	\$ 615,178
Less estimated income	201,245
Net operating budget	\$ 413,933
Capital improvements	2,000
Total general fund appropriation	\$ 415,933

Subdivision 9.

LANGDON EXPERIMENT STATION

Salaries and wages	\$ 345,346
Operating expenses	183,170
Equipment	40,000
Total operating budget	\$ 568,516
Less estimated income	90,646
Total general fund appropriation	\$ 477,870

Subdivision 10.

NORTH CENTRAL EXPERIMENT STATION

Salaries and wages	\$ 359,745
Operating expenses	269,079
Equipment	59,000
Total operating budget	\$ 687,824
Less estimated income	333,923
Total general fund appropriation	\$ 353,901

Subdivision 11.

WILLISTON EXPERIMENT STATION

Salaries and wages	\$ 405,895
Operating expenses	136,230
Equipment	10,122
Total operating budget	\$ 552,247
Less estimated income	119,209
Net operating budget	\$ 433,038
Capital improvements	8,000
Total general fund appropriation	\$ 441,038

Subdivision 12.

CARRINGTON EXPERIMENT STATION

Salaries and wages	\$ 661,991
Operating expenses	525,776
Equipment	77,500
Total operating budget	\$ 1,265,267
Less estimated income	522,068
Total general fund appropriation	\$ 743,199

Subdivision 13.

AGRONOMY SEED FARM

Salaries and wages	\$ 218,443
Operating expenses	368,420
Equipment	92,000
Capital improvements	62,000
Total special funds appropriation	\$ 740,863

Subdivision 14.

LAND RECLAMATION RESEARCH CENTER

Salaries and wages	\$ 1,263,002
Operating expenses	83,535
Equipment	<u>3,600</u>
Total special funds appropriation	\$ 1,350,137
Grand total general fund appropriation H.B. 1005	\$32,565,636
Grand total special funds appropriation H.B. 1005	\$34,072,842
Grand total all funds appropriation H.B. 1005	\$66,638,478

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the North Dakota main experiment station, branch stations, land reclamation research center, northern crops institute, upper great plains transportation institute, and the cooperative extension division, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. All of the moneys in the operating fund shall remain in such fund until expended pursuant to any specific legislative appropriation or an authorization from the emergency commission, and the balances of such moneys except those received from the federal government or as gifts from private sources, shall be used to reduce the amount of moneys to be expended pursuant to the general fund appropriation only to the extent that the unencumbered balance in the operating fund on June 30, 1987, exceeds the estimated income for the biennium ending June 30, 1989.

SECTION 3. TRANSFER. The state board of higher education is authorized to approve transfer of funds between categories of expenditures, and shall notify the director of the office of management and budget within ten days following such authorization.

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 5. INTENT. It is the intent of the legislative assembly that the funds appropriated for the land reclamation research center be used for the following research projects:

1. Prime farmland soil productivity;
2. Development of productivity indices for reclaimed land;
3. Soil respraying and depth of soil replacement; and
4. Run-off and erosion on reclaimed land.

In addition, it is the intent of the legislative assembly that the land reclamation research center file an annual report with the legislative council, the office of management and budget and the public service commission on August 1, 1987, August 1, 1988, and August 1, 1989. The annual report shall contain a description and analysis of the conclusions reached from each reclamation research project that has been conducted to date for the preceding fiscal year as well as a brief description and analysis of any tentative conclusions reached from all ongoing projects. The annual report of the land reclamation research center shall also include any recommendations it may have for reducing unnecessary and duplicative regulatory costs that are not required by federal or state reclamation law and which do not contribute to effective reclamation practices. For any new reclamation research project to be approved for funding, each proposed project must meet all of the following criteria:

1. Development of data and conclusions that will assist in returning the land to its original or better productivity.
2. Development of data and conclusions that will assist in returning the land to an approved postmining land use as soon as possible.
3. Development of data and conclusion that will reduce unnecessary regulatory costs and assist in effectively reclaiming the land to its original or better productivity.

SECTION 6. STORAGE FACILITIES. Structures for storage of agricultural products may be authorized for construction by the state board of higher education when such structures do not exceed \$50,000 in cost.

SECTION 7. APPROPRIATION - MAIN EXPERIMENT STATION. There is hereby appropriated \$300,000 to the main experiment station, out of any funds available from the sale of animals by the experiment stations due to adverse climate conditions, for the purpose of purchasing replacement animals at the respective experiment stations during the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 8. RESEARCH/EXTENSION CONSTRUCTION - APPROPRIATION - BUDGET SECTION APPROVAL. The main agricultural experiment station or any of its branch stations is hereby authorized to accept a gift dedicated to the construction of a facility to house research and extension service staff. The facility is to be constructed at or near the station headquarters site. The total construction cost shall not exceed \$1,000,000 and such amount, or so much thereof as may be necessary, is hereby appropriated for the biennium beginning July 1, 1987, and ending June 30, 1989. Funds shall not be spent pursuant to this section without the approval of the legislative council's budget section.

SECTION 9. APPROPRIATION - MAIN EXPERIMENT STATION - BUDGET SECTION APPROVAL. There is hereby appropriated \$1,200,000, more or less, or so much thereof as may be necessary, from federal or other funds, to the main experiment station to acquire and equip a demonstration feed processing facility for barley and feed grain milling, including equipment for barley and feed grain milling, for the biennium beginning July 1, 1987, and ending June 30, 1989. Any funds received require budget section approval before they can be spent.

SECTION 10. APPROPRIATION - MAIN EXPERIMENT STATION - BUDGET SECTION APPROVAL. There is hereby appropriated \$1,300,000, more or less, or so much thereof as may be necessary, from federal or other funds, to the main experiment station to acquire and equip a pilot durum and hard red spring wheat demonstration milling facility, for the biennium beginning July 1, 1987, and ending June 30, 1989. Any funds received require budget section approval before they can be spent.

SECTION 11. CONTINGENT APPROPRIATION - NORTH CENTRAL EXPERIMENT STATION - BUDGET SECTION APPROVAL. If the balance in the north central experiment station reserve income fund on June 30, 1988, is \$180,000 or more, there is hereby appropriated \$95,000 included in such balance, or so much thereof as may be necessary, for construction of a superintendent's residence on the north central experiment station during the biennium beginning July 1, 1987, and ending June 30, 1989. Any funds to be spent for this purpose require the approval of the budget section of the legislative council.

SECTION 12. LEGISLATIVE INTENT - DETERMINATION OF PERSONNEL REDUCTIONS. It is the intent of the legislative assembly that, for the agencies and institutions named in this Act, including the main and branch experiment stations and cooperative extension division, the determination of personnel reductions required pursuant to salary and wage reductions approved by the fiftieth legislative assembly for the 1987-89 biennium shall be made by the administrators of the agencies and institutions incurring the reductions subject to board of higher education approval.

SECTION 13. LAND RECLAMATION RESEARCH CENTER APPROPRIATION - TRANSFER. The amount appropriated in subdivision 14 of section 1 of this Act includes \$707,111, or so much thereof as may be necessary, for the purpose of funding reclamation research projects, shall be transferred by the industrial commission from the lignite research fund as created by the fiftieth legislative assembly. Such funds shall be transferred at the direction of the office of management and budget from the lignite research fund to the land reclamation research center operating fund for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 24, 1987
Filed April 30, 1987

CHAPTER 6

HOUSE BILL NO. 1006
(Committee on Appropriations)

DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORY SERVICES

AN ACT making an appropriation for defraying the expenses of the department of health and consolidated laboratory services of the state of North Dakota; to provide for a transfer from the abandoned motor vehicle disposal and state fire and tornado funds; and to amend and reenact sections 23-16-03 and 23-17.2-09 of the North Dakota Century Code, relating to the licensing of medical hospitals and application for certification of need for expansion of hospital facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of health and consolidated laboratory services of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$14,686,372
Operating expenses	17,130,558
Data processing	421,703
Equipment	495,925
Grants, benefits, and claims	6,962,700
Abandoned motor vehicle	400,000
Total all funds	\$40,097,258
Less estimated income	26,993,093
Total general fund appropriation	\$13,104,165

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not

affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 4. APPROPRIATION - TRANSFER. The estimated income line item appropriated in section 1 of this Act includes \$400,000 which is hereby appropriated and shall be transferred to the department of health and consolidated laboratory services operating fund from the abandoned motor vehicle disposal fund pursuant to section 39-26-11 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 5. APPROPRIATION - TRANSFER. The estimated income line item appropriated in section 1 of this Act includes \$200,000 which is hereby appropriated and shall be transferred to the department of health and consolidated laboratory services operating fund from the state fire and tornado fund for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. AMENDMENT. Section 23-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-16-03. Application for license - License fee. Applicants for license shall file applications under oath with the state department of health upon forms prescribed. Applications ~~shall~~ must be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a county or municipal unit by the head ~~of such~~ the governmental department having jurisdiction over it. Applications ~~shall~~ must set forth the full name and address of the owner of the institution for which license is sought, the names of the persons in control thereof and such additional information as the state department of health may require, including affirmative evidence of ability to comply with such minimum standards, rules, and regulations as may be lawfully prescribed ~~hereunder~~ pursuant to this section. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by the following fees:

1. For each licensed acute care bed, ten dollars.
2. For each licensed skill care bed, seven dollars.
3. For each licensed intermediate care bed, five dollars.

License fees collected pursuant to this section must be deposited in the state department of health and consolidated laboratory services operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

* SECTION 7. AMENDMENT. Section 23-17.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-09. Application for certificate of need - Filing fee. Applicants for certificate of need shall file notification of intent and applications under oath with the department upon forms prescribed. Notification of intent and applications ~~shall~~ must be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a public institution by the head of ~~such~~ the governmental unit or agency having jurisdiction over it. Notification of intent and applications ~~shall~~ must set forth the full name and address of the owner of the institution for which certificate of need is sought, the names of the persons in control thereof, and such additional information as the department may require including affirmative evidence of ability to comply with licensing or certification requirements when the proposal is implemented. Applicants shall comply with criteria of rules and regulations as set forth therein. The health council shall provide by rule for a notification of intent filing fee not to exceed one hundred dollars for each notification of intent. An application for certificate of need must be accompanied by a fee equaling three-tenths of one percent of the total proposed capital expenditure which fee may not exceed ten thousand dollars and may not be less than five hundred dollars. Fees collected pursuant to this section must be deposited in the state department of health and consolidated laboratory services operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall consider the application and determine from its findings whether such application qualifies the applicant for certification of need under criteria as set forth in the rules and regulations. The determination shall be made after receipt of recommendations from the health systems agency in which the applicant is located and the determination ~~shall~~ must be communicated to the facility or its owners or operators, the respective health systems agency, and all persons filing an appearance immediately after being made. A notice of intent must be filed with the department when a health care facility is acquired.

Approved April 24, 1987
Filed April 27, 1987

* NOTE: Section 23-17.2-09 was also amended by section 6 of Senate Bill No. 2191, chapter 304.

CHAPTER 7

HOUSE BILL NO. 1007
(Committee on Appropriations)

INDIAN AFFAIRS COMMISSION

AN ACT making an appropriation for defraying the expenses of the Indian affairs commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the Indian affairs commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$169,727
Operating expenses	38,800
Equipment	550
Native American alcohol and drug abuse education	303,405
Grants, benefits, and claims	<u>168,000</u>
Total general fund appropriation	\$680,482

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 8

HOUSE BILL NO. 1008
(Committee on Appropriations)

AERONAUTICS COMMISSION

AN ACT making an appropriation for defraying the expenses of the aeronautics commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 323,729
Operating expenses	124,697
Data processing	1,395
Equipment	12,915
Capital improvements	555,000
Grants, benefits, and claims	<u>2,157,090</u>
Total all funds	\$3,174,826
Less estimated income	<u>2,624,826</u>
Total general fund transfer and appropriation	\$ 550,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 9

HOUSE BILL NO. 1009
(Committee on Appropriations)

VETERANS' HOME AND VETERANS' AFFAIRS

AN ACT making an appropriation for defraying the expenses of the veterans' home and the department of veterans' affairs of the state of North Dakota; to provide for a transfer of principal and earnings from the veterans' postwar trust fund; and to amend and reenact section 37-14-14 of the North Dakota Century Code, relating to use of the veterans' postwar trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the veterans' home and the department of veterans' affairs of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$1,578,272
Operating expenses	562,502
Equipment	<u>13,100</u>
Total special funds appropriation	\$2,153,874

Subdivision 2.

VETERANS' AFFAIRS

Salaries and wages	\$ 311,762
Operating expenses	64,630
Equipment	<u>2,400</u>
Total appropriation from veterans' postwar trust fund	\$ 378,792
Grand total special funds appropriated H.B. 1009	\$2,532,666
Grand total all funds appropriated H.B. 1009	\$2,532,666

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any

item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION - TRANSFER. The amount appropriated in subdivision 1 of section 1 of this Act includes \$1,343,384 which is hereby appropriated and shall be transferred to the veterans' home operating fund from the veterans' postwar trust fund pursuant to section 37-14-14 for the biennium beginning July 1, 1987, and ending June 30, 1989.

* **SECTION 4. AMENDMENT.** Section 37-14-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund shall consist of moneys transferred or credited to the fund, pursuant to the provisions of this chapter and of other laws. The fund shall be invested by the state treasurer in legal investments authorized by section 21-10-07. ~~All~~ The fund and all income received on the investments ~~is~~ are to be utilized in benefit and service to veterans as defined in section 37-01-40, or their dependents, as determined and appropriated by the legislative assembly.

SECTION 5. TRANSFER - VETERANS' POSTWAR TRUST FUND - GENERAL FUND. Notwithstanding the provisions of North Dakota Century Code section 37-14-14, the sum of \$2,000,000 from the veterans' postwar trust fund shall be transferred by the state treasurer to the general fund on July 1, 1987.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that in future bienniums the veterans' home and veterans' affairs be funded from the general fund.

Approved April 24, 1987

Filed April 27, 1987

* NOTE: Section 37-14-14 was also amended by section 12 of House Bill No. 1031, chapter 190.

CHAPTER 10

HOUSE BILL NO. 1010
(Committee on Appropriations)

BANKING AND FINANCIAL INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of the department of banking and financial institutions of the state of North Dakota; to amend and reenact sections 6-01-17 and 6-09-29 of the North Dakota Century Code, and subsection 4 of section 6-06-08 of the North Dakota Century Code as amended by section 1 of House Bill No. 1218, as approved by the fiftieth legislative assembly, relating to yearly assessment and examination fees of banks and credit unions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the department of banking and financial institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,409,033
Operating expenses	299,031
Equipment	500
Total general fund appropriation	<u>\$1,708,564</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after

certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

* SECTION 4. AMENDMENT. Section 6-01-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-17. Yearly assessment of banks. Every state banking association and banking institution placed under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by the provisions of this title shall pay into the state treasury ~~the following a~~ yearly assessment of one and ~~one-quarter~~ ~~one-half~~ hundredths of one percent of gross amount of the assets of said corporation or association on June thirtieth of each ~~that~~ year, exclusive of expenses, interest, and taxes paid, and inclusive of any valuation allowance or allowances deducted by a state banking association from any asset account. Such fee shall not be less than seven hundred fifty dollars ~~and not more than seven thousand five hundred dollars~~. Assessment fees shall not be computed on the combined assets of the bank and its trust department for those banks exercising trust powers. The minimum and maximum shall apply to the assets of the bank separate from the assets of the trust department, and fees for examination of the trust department shall be computed in accordance with section 6-05-28. The assessment shall be paid to the state treasurer within thirty days of each June thirtieth, ~~except that institutions whose examination has begun within the six months immediately prior to July 1, 1983, shall not have to pay the first yearly assessment~~. Institutions that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment. The state treasurer shall report such payments of fees to the state banking board, and if any such corporation or institution shall be delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation or institution until payment of the amount due, plus a penalty of five dollars a day additional for the delay.

SECTION 5. AMENDMENT. If House Bill No. 1218 becomes effective, then subsection 4 of section 6-06-08 of the North Dakota Century Code, as amended by section 1 of House Bill No. 1218, is hereby amended and reenacted to read as follows:

4. Every state credit union placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay into the state treasury ~~the following a~~ yearly assessment of one and one-half hundredths of one percent of the gross amount of the assets of the corporation or association on June thirtieth of each ~~that~~ year, exclusive of expenses, interest, and taxes paid, and inclusive of any valuation allowance or allowances deducted by the credit union from any asset account. The fee may not be less than three hundred dollars ~~and not more than seven thousand five hundred dollars~~. The assessment must be paid to the state

* NOTE: Section 6-01-17 was also amended by section 2 of Senate Bill No. 2135, chapter 120.

treasurer within thirty days of each June thirtieth, except that those credit unions whose examination has begun within the six months immediately prior to July 1, 1987, do not have to pay the first yearly assessment. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the state credit union board, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due, plus a penalty of five dollars a day additional for the delay. The examination fee for North Dakota central credit union shall be one hundred thirty-five dollars per examiner day for the time used charged by the department at an hourly rate to be set by the commissioner or other person or persons designated by the commissioner in making and otherwise preparing and typing the reports of, sufficient to cover all reasonable expenses of the department associated with the examination.

SECTION 6. AMENDMENT. Section 6-09-29 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-29. Department of banking and financial institutions and the industrial commission responsible for examinations and audit reports. The industrial commission shall be responsible for contracting with a nongovernment certified public accounting firm to annually audit the Bank of North Dakota in accordance with generally accepted auditing standards, which shall include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The auditor so hired shall audit the Bank's methods of operation and accounting, shall report the results to the industrial commission as soon as practicable, and shall furnish one copy to the legislative assembly. The costs of such audit shall be paid for by the Bank of North Dakota. The department of banking and financial institutions, through the commissioner, shall be responsible for performing an examination of the Bank of North Dakota at least once each twenty-four months and for any investigation of the Bank which may be necessary. The examination results, and the results of any necessary investigation, shall be reported to the industrial commission as soon as practicable and to the legislative assembly. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the an hourly rate of one hundred thirty-five dollars per day for the time used to be set by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for the time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examinations required, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section.

SECTION 7. EFFECTIVE DATE. The first assessments under sections 4 and 5 of this Act apply to assets as of June 30, 1987.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 11

HOUSE BILL NO. 1011
(Committee on Appropriations)

SECURITIES COMMISSIONER

AN ACT making an appropriation for defraying the expenses of the securities commissioner of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$329,948
Operating expenses	50,900
Equipment	<u>2,500</u>
Total general fund appropriation	\$383,348

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 12

HOUSE BILL NO. 1012
(Committee on Appropriations)

LIVESTOCK SANITARY BOARD

AN ACT making an appropriation for defraying the expenses of the livestock sanitary board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the livestock sanitary board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$348,352
Operating expenses	138,834
Equipment	2,200
Total general fund appropriation	<u>\$489,386</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 13

HOUSE BILL NO. 1013
(Committee on Appropriations)

MILK STABILIZATION BOARD

AN ACT making an appropriation for defraying the expenses of the milk stabilization board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the milk stabilization fund in the state treasury, not otherwise appropriated, to the milk stabilization board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$290,469
Operating expenses	145,060
Equipment	4,277
Contingency	<u>5,000</u>
Total appropriation from milk stabilization fund	\$444,806

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 14

HOUSE BILL NO. 1014
(Committee on Appropriations)

STATE FAIR ASSOCIATION

AN ACT making an appropriation for defraying the expenses of the state fair association of the state of North Dakota; to provide legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association of the state of North Dakota, for the purpose of defraying premium expenses, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Capital improvements	\$210,000
Premiums	\$240,000
Total general fund appropriation	\$450,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. LEGISLATIVE INTENT - CAPITAL IMPROVEMENTS. It is the intent of the legislative assembly that the \$210,000 contained in the state fair association capital improvements line item is for the beginning of the repayment of a \$3,000,000 loan for a state fair association cultural exhibit building and land acquisition.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 15

HOUSE BILL NO. 1015 (Committee on Appropriations)

COUNCIL ON THE ARTS

AN ACT making an appropriation for defraying the expenses of the council on the arts of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 260,816
Operating expenses	157,031
Equipment	700
Grants, benefits, and claims	<u>1,232,040</u>
Total all funds	\$1,650,587
Less estimated income	<u>1,204,424</u>
Total general fund appropriation	\$ 446,163

SECTION 2. APPROPRIATION. All income from the cultural arts endowment fund is hereby appropriated for the furthering of the cultural arts in the state of North Dakota for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 17, 1987

CHAPTER 16

HOUSE BILL NO. 1016
(Committee on Appropriations)

HIGHWAY PATROL

AN ACT making an appropriation for defraying the expenses of the highway patrol of the state of North Dakota and providing for a transfer of funds from the state highway fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys not otherwise appropriated, from special funds derived from federal funds and other income, to the highway patrol of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

HIGHWAY PATROL	
Salaries and wages	\$12,436,424
Operating expenses	3,665,467
Data processing	145,934
Equipment	165,600
Capital improvements	45,500
Total special funds appropriation	<u>\$16,458,925</u>

SECTION 2. APPROPRIATION. Each patrolman of the state highway patrol shall receive from funds appropriated in the operating expenses line item in section 1 of this Act an amount not to exceed \$120 per month for the biennium beginning July 1, 1987, and ending June 30, 1989. Such payments shall be in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. Such amounts shall be paid without the presentation of receipts or other memoranda at the time and in the same manner as salaries of members of the highway patrol are paid.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any

item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. APPROPRIATION - TRANSFER. There is hereby appropriated in the special funds line item of section 1 of this Act, the sum of \$16,458,925, or so much thereof as may be necessary, from the state highway fund, to be transferred at the direction of the office of management and budget, for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 17

HOUSE BILL NO. 1017
 (Committee on Appropriations)

HIGHWAY DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the highway department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 58,722,599
Operating expenses	40,237,142
Data processing	2,273,753
Equipment	10,314,441
Grants, benefits, and claims	6,202,776
Capital improvements	228,942,201
Special contracts	960,000
Total all funds	<u>\$347,652,912</u>
Less estimated special funds	<u>347,624,112</u>
Total general fund appropriation	\$ 28,800

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1987
 Filed April 15, 1987

CHAPTER 18

HOUSE BILL NO. 1018
(Committee on Appropriations)

**MOTOR VEHICLE DEPARTMENT AND MOTOR
VEHICLE REGISTRATION FEES**

AN ACT to amend and reenact subdivisions a, b, and c of subsection 2, and subsection 5 of section 39-04-19 of the North Dakota Century Code, relating to vehicle registration fees; to provide an appropriation for defraying the expenses of the motor vehicle department of the state of North Dakota; to provide for application of this Act; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If Senate Bill No. 2259 does not become effective, subdivisions a, b, and c of subsection 2, and subsection 5 of section 39-04-19 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- a. Passenger motor vehicles including buses for hire, hearses, and ambulances:

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, and 4th Years	5th, 6th, and 7th Years	8th, 9th, and 10th Years	11th and Subsequent Years
Less than 3,200	\$ 44.00	\$ 36.00	\$ 28.00	\$20.00
3,200-4,499	64.00	52.00	40.00	28.00
4,500-4,999	82.00	65.00	50.00	34.00
5,000-5,999	113.00	91.00	69.00	47.00
6,000-6,999	146.00	117.00	88.00	60.00
7,000-7,999	179.00	143.00	108.00	73.00
8,000-8,999	212.00	170.00	128.00	86.00
9,000 and over	245.00	196.00	148.00	99.00
Less than 3,200	\$ 45.00	\$ 37.00	\$ 29.00	\$21.00
3,200-4,499	65.00	53.00	41.00	29.00
4,500-4,999	83.00	66.00	51.00	35.00
5,000-5,999	114.00	92.00	70.00	48.00
6,000-6,999	147.00	118.00	89.00	61.00
7,000-7,999	180.00	144.00	109.00	74.00

8,000-8,999	213.00	171.00	129.00	87.00
9,000 and over	246.00	197.00	149.00	100.00

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

Gross Weights Net	YEARS REGISTERED			
	1st, 2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and Subsequent Years
over 4,000	\$42.00	\$29.00	\$24.00	\$21.00
4,001- 6,000	47.00	34.00	28.00	22.00
6,001- 8,000	52.00	39.00	32.00	23.00
8,001-10,000	57.00	44.00	36.00	25.00
10,001-12,000	62.00	49.00	40.00	27.00
12,001-14,000	67.00	54.00	44.00	30.00
14,001-16,000	72.00	59.00	48.00	33.00
16,001-18,000	77.00	64.00	52.00	35.00
18,001-20,000	80.00	67.00	54.00	36.00
Not over 4,000	\$43.00	\$30.00	\$25.00	\$22.00
4,001- 6,000	48.00	35.00	29.00	23.00
6,001- 8,000	53.00	40.00	33.00	24.00
8,001-10,000	58.00	45.00	37.00	26.00
10,001-12,000	63.00	50.00	41.00	28.00
12,001-14,000	68.00	55.00	45.00	31.00
14,001-16,000	73.00	60.00	49.00	34.00
16,001-18,000	78.00	65.00	53.00	36.00
18,001-20,000	81.00	68.00	55.00	37.00

Gross Weights	YEARS REGISTERED		
	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, 8th, 9th, and 10th Years	11th and Subsequent Years
20,001- 22,000	\$ 110.00	\$ 84.00	\$ 71.00
22,001- 26,000	162.00	132.00	116.00
26,001- 30,000	223.00	181.00	159.00
30,001- 34,000	289.00	234.00	206.00
34,001- 38,000	350.00	283.00	249.00
38,001- 42,000	411.00	332.00	291.00

42,001-	46,000	472.00	380.00	334.00
46,001-	50,000	533.00	429.00	377.00
50,001-	54,000	603.00	487.00	428.00
54,001-	58,000	664.00	536.00	471.00
58,001-	62,000	725.00	585.00	514.00
62,001-	66,000	786.00	633.00	557.00
66,001-	70,000	847.00	682.00	599.00
70,001-	74,000	908.00	731.00	642.00
74,001-	78,000	969.00	780.00	685.00
78,001-	82,000	1,030.00	829.00	728.00
82,001-	86,000	1,153.00	934.00	815.00
86,001-	90,000	1,275.00	1,038.00	902.00
90,001-	94,000	1,397.00	1,143.00	989.00
94,001-	98,000	1,519.00	1,248.00	1,077.00
98,001-	102,000	1,641.00	1,352.00	1,164.00
102,001-	105,500	1,763.00	1,457.00	1,251.00
20,001-	22,000	\$ 111.00	\$ 85.00	\$ 72.00
22,001-	26,000	163.00	133.00	117.00
26,001-	30,000	224.00	182.00	160.00
30,001-	34,000	290.00	235.00	207.00
34,001-	38,000	351.00	284.00	250.00
38,001-	42,000	412.00	333.00	292.00
42,001-	46,000	473.00	381.00	335.00
46,001-	50,000	534.00	430.00	378.00
50,001-	54,000	604.00	488.00	429.00
54,001-	58,000	665.00	537.00	472.00
58,001-	62,000	726.00	586.00	515.00
62,001-	66,000	787.00	634.00	558.00
66,001-	70,000	848.00	683.00	600.00
70,001-	74,000	909.00	732.00	643.00
74,001-	78,000	970.00	781.00	686.00
78,001-	82,000	1,031.00	830.00	729.00
82,001-	86,000	1,154.00	935.00	816.00
86,001-	90,000	1,276.00	1,039.00	903.00
90,001-	94,000	1,398.00	1,144.00	990.00
94,001-	98,000	1,520.00	1,249.00	1,078.00
98,001-	102,000	1,642.00	1,353.00	1,165.00
102,001-	105,500	1,764.00	1,458.00	1,252.00

c. Motorcycles, ~~ten~~ eleven dollars.

5. Trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis

with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire.

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and Subsequent Years
20,001-22,000	\$ 83.00	\$ 69.00	\$ 55.00	\$ 37.00
22,001-24,000	88.00	73.00	58.00	39.00
24,001-26,000	96.00	79.00	62.00	41.00
26,001-28,000	106.00	87.00	68.00	45.00
28,001-30,000	116.00	95.00	74.00	49.00
30,001-32,000	131.00	108.00	85.00	58.00
32,001-34,000	141.00	116.00	91.00	62.00
34,001-36,000	151.00	124.00	97.00	66.00
36,001-38,000	161.00	132.00	103.00	70.00
38,001-40,000	171.00	140.00	109.00	74.00
40,001-42,000	181.00	148.00	115.00	78.00
42,001-44,000	191.00	156.00	121.00	82.00
44,001-46,000	201.00	164.00	127.00	86.00
46,001-48,000	211.00	172.00	133.00	90.00
48,001-50,000	221.00	180.00	139.00	94.00
50,001-52,000	241.00	198.00	155.00	108.00
52,001-54,000	251.00	206.00	161.00	112.00
54,001-56,000	261.00	214.00	167.00	116.00
56,001-58,000	271.00	222.00	173.00	120.00
58,001-60,000	281.00	230.00	179.00	124.00
60,001-62,000	291.00	238.00	185.00	128.00
62,001-64,000	301.00	246.00	191.00	132.00
64,001-66,000	311.00	254.00	197.00	136.00
66,001-68,000	321.00	262.00	203.00	140.00
68,001-70,000	331.00	270.00	209.00	144.00
70,001-72,000	341.00	278.00	215.00	148.00
72,001-74,000	351.00	286.00	221.00	152.00
74,001-76,000	361.00	294.00	227.00	156.00
76,001-78,000	371.00	302.00	233.00	160.00
78,001-80,000	381.00	310.00	239.00	164.00
80,001-82,000	391.00	318.00	245.00	168.00
20,001-22,000	\$ 84.00	\$ 70.00	\$ 56.00	\$ 38.00
22,001-24,000	89.00	74.00	59.00	40.00
24,001-26,000	97.00	80.00	63.00	42.00
26,001-28,000	107.00	88.00	69.00	46.00
28,001-30,000	117.00	96.00	75.00	50.00
30,001-32,000	132.00	109.00	86.00	59.00
32,001-34,000	142.00	117.00	92.00	63.00
34,001-36,000	152.00	125.00	98.00	67.00
36,001-38,000	162.00	133.00	104.00	71.00
38,001-40,000	172.00	141.00	110.00	75.00
40,001-42,000	182.00	149.00	116.00	79.00
42,001-44,000	192.00	157.00	122.00	83.00
44,001-46,000	202.00	165.00	128.00	87.00
46,001-48,000	212.00	173.00	134.00	91.00

48,001-50,000	222.00	181.00	140.00	95.00
50,001-52,000	242.00	199.00	156.00	109.00
52,001-54,000	252.00	207.00	162.00	113.00
54,001-56,000	262.00	215.00	168.00	117.00
56,001-58,000	272.00	223.00	174.00	121.00
58,001-60,000	282.00	231.00	180.00	125.00
60,001-62,000	292.00	239.00	186.00	129.00
62,001-64,000	302.00	247.00	192.00	133.00
64,001-66,000	312.00	255.00	198.00	137.00
66,001-68,000	322.00	263.00	204.00	141.00
68,001-70,000	332.00	271.00	210.00	145.00
70,001-72,000	342.00	279.00	216.00	149.00
72,001-74,000	352.00	287.00	222.00	153.00
74,001-76,000	362.00	295.00	228.00	157.00
76,001-78,000	372.00	303.00	234.00	161.00
78,001-80,000	382.00	311.00	240.00	165.00
80,001-82,000	392.00	319.00	246.00	169.00

SECTION 2. AMENDMENT. If Senate Bill No. 2259 becomes effective, subdivisions a, b, and c of subsection 2, and subsection 5 of section 39-04-19 of the 1985 Supplement to the North Dakota Century Code as amended by section 1 of Senate Bill No. 2259, as approved by the fiftieth legislative assembly, are hereby amended and reenacted to read as follows:

a. Passenger motor vehicles:

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, and 8th Years	9th, 10th, and 11th Years	12th and Subsequent Years
Less than 3,200	\$ 47.75	\$ 39.75	\$ 31.75	\$ 23.75
3,200-4,499	67.75	55.75	43.75	31.75
4,500-4,999	85.75	68.75	53.75	37.75
5,000-5,999	116.75	94.75	72.75	50.75
6,000-6,999	149.75	120.75	91.75	63.75
7,000-7,999	182.75	146.75	111.75	76.75
8,000-8,999	215.75	173.75	131.75	89.75
9,000 and over	248.75	199.75	151.75	102.75
Less than 3,200	\$ 48.75	\$ 40.75	\$ 32.75	\$ 24.75
3,200-4,499	68.75	56.75	44.75	32.75
4,500-4,999	86.75	69.75	54.75	38.75
5,000-5,999	117.75	95.75	73.75	51.75
6,000-6,999	150.75	121.75	92.75	64.75
7,000-7,999	183.75	147.75	112.75	77.75
8,000-8,999	216.75	174.75	132.75	90.75
9,000 and over	249.75	200.75	152.75	103.75

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

Gross Weights Net	YEARS REGISTERED				
	1st, 2nd, 3rd, and 5th Years	2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years
over 4,000	\$45.75		\$32.75	\$27.75	\$24.75
4,001- 6,000	50.75		37.75	31.75	25.75
6,001- 8,000	55.75		42.75	35.75	26.75
8,001-10,000	60.75		47.75	39.75	28.75
10,001-12,000	65.75		52.75	43.75	30.75
12,001-14,000	70.75		57.75	47.75	33.75
14,001-16,000	75.75		62.75	51.75	36.75
16,001-18,000	80.75		67.75	55.75	38.75
18,001-20,000	83.75		70.75	57.75	39.75
Not over 4,000	\$46.75		\$33.75	\$28.75	\$25.75
4,001- 6,000	51.75		38.75	32.75	26.75
6,001- 8,000	56.75		43.75	36.75	27.75
8,001-10,000	61.75		48.75	40.75	29.75
10,001-12,000	66.75		53.75	44.75	31.75
12,001-14,000	71.75		58.75	48.75	34.75
14,001-16,000	76.75		63.75	52.75	37.75
16,001-18,000	81.75		68.75	56.75	39.75
18,001-20,000	84.75		71.75	58.75	40.75

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, 9th, 10th, and 11th Years	12th and Subsequent Years	
20,001- 22,000	\$ 113.75	\$ 87.75	\$ 74.75	
22,001- 26,000	165.75	135.75	119.75	
26,001- 30,000	226.75	184.75	162.75	
30,001- 34,000	292.75	237.75	209.75	
34,001- 38,000	353.75	286.75	252.75	
38,001- 42,000	414.75	335.75	294.75	
42,001- 46,000	475.75	383.75	337.75	
46,001- 50,000	536.75	432.75	380.75	
50,001- 54,000	606.75	490.75	431.75	
54,001- 58,000	667.75	539.75	474.75	
58,001- 62,000	728.75	588.75	517.75	
62,001- 66,000	789.75	636.75	560.75	
66,001- 70,000	850.75	685.75	602.75	
70,001- 74,000	911.75	734.75	645.75	
74,001- 78,000	972.75	783.75	688.75	
78,001- 82,000	1,033.75	832.75	731.75	

82,001- 86,000	1,156.75	937.75	818.75
86,001- 90,000	1,278.75	1,041.75	905.75
90,001- 94,000	1,400.75	1,146.75	992.75
94,001- 98,000	1,522.75	1,251.75	1,080.75
98,001-102,000	1,644.75	1,355.75	1,167.75
102,001-105,500	1,766.75	1,460.75	1,254.75
20,001- 22,000	\$ 114.75	\$ 88.75	\$ 75.75
22,001- 26,000	166.75	136.75	120.75
26,001- 30,000	227.75	185.75	163.75
30,001- 34,000	293.75	238.75	210.75
34,001- 38,000	354.75	287.75	253.75
38,001- 42,000	415.75	336.75	295.75
42,001- 46,000	476.75	384.75	338.75
46,001- 50,000	537.75	433.75	381.75
50,001- 54,000	607.75	491.75	432.75
54,001- 58,000	668.75	540.75	475.75
58,001- 62,000	729.75	589.75	518.75
62,001- 66,000	790.75	637.75	561.75
66,001- 70,000	851.75	686.75	603.75
70,001- 74,000	912.75	735.75	646.75
74,001- 78,000	973.75	784.75	689.75
78,001- 82,000	1,034.75	833.75	732.75
82,001- 86,000	1,157.75	938.75	819.75
86,001- 90,000	1,279.75	1,042.75	906.75
90,001- 94,000	1,401.75	1,147.75	993.75
94,001- 98,000	1,523.75	1,252.75	1,081.75
98,001-102,000	1,645.75	1,356.75	1,168.75
102,001-105,500	1,767.75	1,461.75	1,255.75

c. Motorcycles, thirteen fourteen dollars and seventy-five cents.

5. Trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire.

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years

20,001-22,000	\$ 86.75	\$ 72.75	\$ 58.75	\$ 40.75
22,001-24,000	91.75	76.75	61.75	42.75
24,001-26,000	99.75	82.75	65.75	44.75
26,001-28,000	109.75	90.75	71.75	48.75
28,001-30,000	119.75	98.75	77.75	52.75
30,001-32,000	134.75	111.75	88.75	61.75
32,001-34,000	144.75	119.75	94.75	65.75
34,001-36,000	154.75	127.75	100.75	69.75
36,001-38,000	164.75	135.75	106.75	73.75
38,001-40,000	174.75	143.75	112.75	77.75
40,001-42,000	184.75	151.75	118.75	81.75
42,001-44,000	194.75	159.75	124.75	85.75
44,001-46,000	204.75	167.75	130.75	89.75
46,001-48,000	214.75	175.75	136.75	93.75
48,001-50,000	224.75	183.75	142.75	97.75
50,001-52,000	244.75	201.75	158.75	111.75
52,001-54,000	254.75	209.75	164.75	115.75
54,001-56,000	264.75	217.75	170.75	119.75
56,001-58,000	274.75	225.75	176.75	123.75
58,001-60,000	284.75	233.75	182.75	127.75
60,001-62,000	294.75	241.75	188.75	131.75
62,001-64,000	304.75	249.75	194.75	135.75
64,001-66,000	314.75	257.75	200.75	139.75
66,001-68,000	324.75	265.75	206.75	143.75
68,001-70,000	334.75	273.75	212.75	147.75
70,001-72,000	344.75	281.75	218.75	151.75
72,001-74,000	354.75	289.75	224.75	155.75
74,001-76,000	364.75	297.75	230.75	159.75
76,001-78,000	374.75	305.75	236.75	163.75
78,001-80,000	384.75	313.75	242.75	167.75
80,001-82,000	394.75	321.75	248.75	171.75
20,001-22,000	\$ 87.75	\$ 73.75	\$ 59.75	\$ 41.75
22,001-24,000	92.75	77.75	62.75	43.75
24,001-26,000	100.75	83.75	66.75	45.75
26,001-28,000	110.75	91.75	72.75	49.75
28,001-30,000	120.75	99.75	78.75	53.75
30,001-32,000	135.75	112.75	89.75	62.75
32,001-34,000	145.75	120.75	95.75	66.75
34,001-36,000	155.75	128.75	101.75	70.75
36,001-38,000	165.75	136.75	107.75	74.75
38,001-40,000	175.75	144.75	113.75	78.75
40,001-42,000	185.75	152.75	119.75	82.75
42,001-44,000	195.75	160.75	125.75	86.75
44,001-46,000	205.75	168.75	131.75	90.75
46,001-48,000	215.75	176.75	137.75	94.75
48,001-50,000	225.75	184.75	143.75	98.75
50,001-52,000	245.75	202.75	159.75	112.75
52,001-54,000	255.75	210.75	165.75	116.75
54,001-56,000	265.75	218.75	171.75	120.75
56,001-58,000	275.75	226.75	177.75	124.75
58,001-60,000	285.75	234.75	183.75	128.75
60,001-62,000	295.75	242.75	189.75	132.75
62,001-64,000	305.75	250.75	195.75	136.75
64,001-66,000	315.75	258.75	201.75	140.75

66,001-68,000	325.75	266.75	207.75	144.75
68,001-70,000	335.75	274.75	213.75	148.75
70,001-72,000	345.75	282.75	219.75	152.75
72,001-74,000	355.75	290.75	225.75	156.75
74,001-76,000	365.75	298.75	231.75	160.75
76,001-78,000	375.75	306.75	237.75	164.75
78,001-80,000	385.75	314.75	243.75	168.75
80,001-82,000	395.75	322.75	249.75	172.75

SECTION 3. AMENDMENT. If Senate Bill No. 2259 becomes effective, subdivisions a, b, and c of subsection 2, and subsection 5 of section 39-04-19 of the 1985 Supplement to the North Dakota Century Code, as amended by section 2 of Senate Bill No. 2259, as approved by the fiftieth legislative assembly, are hereby amended and reenacted to read as follows:

a. Passenger motor vehicles:

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, and 8th Years	9th, 10th, and 11th Years	12th and Subsequent Years	
Less than 3,200	\$ 49.00	\$ 41.00	\$ 33.00	\$25.00	
3,200-4,499	69.00	57.00	45.00	33.00	
4,500-4,999	87.00	70.00	55.00	39.00	
5,000-5,999	118.00	96.00	74.00	52.00	
6,000-6,999	151.00	122.00	93.00	65.00	
7,000-7,999	184.00	148.00	113.00	78.00	
8,000-8,999	217.00	175.00	133.00	91.00	
9,000 and over	250.00	201.00	153.00	104.00	
Less than 3,200	\$ 50.00	\$ 42.00	\$ 34.00	\$26.00	
3,200-4,499	70.00	58.00	46.00	34.00	
4,500-4,999	88.00	71.00	56.00	40.00	
5,000-5,999	119.00	97.00	75.00	53.00	
6,000-6,999	152.00	123.00	94.00	66.00	
7,000-7,999	185.00	149.00	114.00	79.00	
8,000-8,999	218.00	176.00	134.00	92.00	
9,000 and over	251.00	202.00	154.00	105.00	

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

Gross Weights Net	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years	
over 4,000	\$47.00	\$34.00	\$29.00	\$26.00	
4,001- 6,000	52.00	39.00	33.00	27.00	
6,001- 8,000	57.00	44.00	37.00	28.00	
8,001-10,000	62.00	49.00	41.00	30.00	
10,001-12,000	67.00	54.00	45.00	32.00	
12,001-14,000	72.00	59.00	49.00	35.00	
14,001-16,000	77.00	64.00	53.00	38.00	
16,001-18,000	82.00	69.00	57.00	40.00	
18,001-20,000	85.00	72.00	59.00	41.00	
Not over 4,000	\$48.00	\$35.00	\$30.00	\$27.00	
4,001- 6,000	53.00	40.00	34.00	28.00	
6,001- 8,000	58.00	45.00	38.00	29.00	
8,001-10,000	63.00	50.00	42.00	31.00	
10,001-12,000	68.00	55.00	46.00	33.00	
12,001-14,000	73.00	60.00	50.00	36.00	
14,001-16,000	78.00	65.00	54.00	39.00	
16,001-18,000	83.00	70.00	58.00	41.00	
18,001-20,000	86.00	73.00	60.00	42.00	

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, 9th, 10th, and 11th Years	12th and Subsequent Years		
20,001- 22,000	\$ 115.00	\$ 89.00	\$ 76.00		
22,001- 26,000	167.00	137.00	121.00		
26,001- 30,000	228.00	186.00	164.00		
30,001- 34,000	294.00	239.00	211.00		
34,001- 38,000	355.00	288.00	254.00		
38,001- 42,000	416.00	337.00	296.00		
42,001- 46,000	477.00	385.00	339.00		
46,001- 50,000	538.00	434.00	382.00		
50,001- 54,000	608.00	492.00	433.00		
54,001- 58,000	669.00	541.00	476.00		
58,001- 62,000	730.00	590.00	519.00		
62,001- 66,000	791.00	638.00	562.00		
66,001- 70,000	852.00	687.00	604.00		
70,001- 74,000	913.00	736.00	647.00		
74,001- 78,000	974.00	785.00	690.00		
78,001- 82,000	1,035.00	834.00	733.00		
82,001- 86,000	1,158.00	939.00	820.00		
86,001- 90,000	1,280.00	1,043.00	907.00		
90,001- 94,000	1,402.00	1,148.00	994.00		
94,001- 98,000	1,524.00	1,253.00	1,082.00		
98,001-102,000	1,646.00	1,357.00	1,169.00		
102,001-105,500	1,768.00	1,462.00	1,256.00		
20,001- 22,000	\$ 116.00	\$ 90.00	\$ 77.00		
22,001- 26,000	168.00	138.00	122.00		
26,001- 30,000	229.00	187.00	165.00		

30,001- 34,000	295.00	240.00	212.00
34,001- 38,000	356.00	289.00	255.00
38,001- 42,000	417.00	338.00	297.00
42,001- 46,000	478.00	386.00	340.00
46,001- 50,000	539.00	435.00	383.00
50,001- 54,000	609.00	493.00	434.00
54,001- 58,000	670.00	542.00	477.00
58,001- 62,000	731.00	591.00	520.00
62,001- 66,000	792.00	639.00	563.00
66,001- 70,000	853.00	688.00	605.00
70,001- 74,000	914.00	737.00	648.00
74,001- 78,000	975.00	786.00	691.00
78,001- 82,000	1,036.00	835.00	734.00
82,001- 86,000	1,159.00	940.00	821.00
86,001- 90,000	1,281.00	1,044.00	908.00
90,001- 94,000	1,403.00	1,149.00	995.00
94,001- 98,000	1,525.00	1,254.00	1,083.00
98,001-102,000	1,647.00	1,358.00	1,170.00
102,001-105,500	1,769.00	1,463.00	1,257.00

c. Motorcycles, ~~fifteen~~ sixteen dollars.

5. Trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire.

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years	
20,001-22,000	\$ 88-00	\$ 74-00	\$ 60-00	\$ 42-00	
22,001-24,000	93-00	78-00	63-00	44-00	
24,001-26,000	101-00	84-00	67-00	46-00	
26,001-28,000	111-00	92-00	73-00	50-00	
28,001-30,000	121-00	100-00	79-00	54-00	
30,001-32,000	136-00	113-00	90-00	63-00	
32,001-34,000	146-00	121-00	96-00	67-00	
34,001-36,000	156-00	129-00	102-00	71-00	
36,001-38,000	166-00	137-00	108-00	75-00	
38,001-40,000	176-00	145-00	114-00	79-00	

40,001-42,000	186.00	153.00	120.00	83.00
42,001-44,000	196.00	161.00	126.00	87.00
44,001-46,000	206.00	169.00	132.00	91.00
46,001-48,000	216.00	177.00	138.00	95.00
48,001-50,000	226.00	185.00	144.00	99.00
50,001-52,000	246.00	203.00	160.00	113.00
52,001-54,000	256.00	211.00	166.00	117.00
54,001-56,000	266.00	219.00	172.00	121.00
56,001-58,000	276.00	227.00	178.00	125.00
58,001-60,000	286.00	235.00	184.00	129.00
60,001-62,000	296.00	243.00	190.00	133.00
62,001-64,000	306.00	251.00	196.00	137.00
64,001-66,000	316.00	259.00	202.00	141.00
66,001-68,000	326.00	267.00	208.00	145.00
68,001-70,000	336.00	275.00	214.00	149.00
70,001-72,000	346.00	283.00	220.00	153.00
72,001-74,000	356.00	291.00	226.00	157.00
74,001-76,000	366.00	299.00	232.00	161.00
76,001-78,000	376.00	307.00	238.00	165.00
78,001-80,000	386.00	315.00	244.00	169.00
80,001-82,000	396.00	323.00	250.00	173.00
20,001-22,000	\$ 89.00	\$ 75.00	\$ 61.00	\$ 43.00
22,001-24,000	94.00	79.00	64.00	45.00
24,001-26,000	102.00	85.00	68.00	47.00
26,001-28,000	112.00	93.00	74.00	51.00
28,001-30,000	122.00	101.00	80.00	55.00
30,001-32,000	137.00	114.00	91.00	64.00
32,001-34,000	147.00	122.00	97.00	68.00
34,001-36,000	157.00	130.00	103.00	72.00
36,001-38,000	167.00	138.00	109.00	76.00
38,001-40,000	177.00	146.00	115.00	80.00
40,001-42,000	187.00	154.00	121.00	84.00
42,001-44,000	197.00	162.00	127.00	88.00
44,001-46,000	207.00	170.00	133.00	92.00
46,001-48,000	217.00	178.00	139.00	96.00
48,001-50,000	227.00	186.00	145.00	100.00
50,001-52,000	247.00	204.00	161.00	114.00
52,001-54,000	257.00	212.00	167.00	118.00
54,001-56,000	267.00	220.00	173.00	122.00
56,001-58,000	277.00	228.00	179.00	126.00
58,001-60,000	287.00	236.00	185.00	130.00
60,001-62,000	297.00	244.00	191.00	134.00
62,001-64,000	307.00	252.00	197.00	138.00
64,001-66,000	317.00	260.00	203.00	142.00
66,001-68,000	327.00	268.00	209.00	146.00
68,001-70,000	337.00	276.00	215.00	150.00
70,001-72,000	347.00	284.00	221.00	154.00
72,001-74,000	357.00	292.00	227.00	158.00
74,001-76,000	367.00	300.00	233.00	162.00
76,001-78,000	377.00	308.00	239.00	166.00
78,001-80,000	387.00	316.00	245.00	170.00
80,001-82,000	397.00	324.00	251.00	174.00

SECTION 4. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the motor vehicle registration fund in the state treasury, not otherwise appropriated, to the motor vehicle department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$2,207,038
Operating expenses	1,512,594
Data processing	502,777
License plates and tabs	2,402,481
Equipment	37,500
Special refunds	25,700
Contingency fund	100,000
Total appropriation from motor vehicle registration fund	\$6,788,090

SECTION 5. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 6. APPLICATION OF ACT. If Senate Bill No. 2259 does not become effective, section 1 of this Act applies to vehicle registration periods beginning after December 31, 1987, and before January 1, 1990. If Senate Bill No. 2259 becomes effective, section 2 of this Act applies to vehicle registration periods beginning after December 31, 1987, and before January 1, 1989, and section 3 of this Act applies to vehicle registration periods beginning after December 31, 1988, and before January 1, 1990.

SECTION 7. EFFECTIVE DATE - EXPIRATION DATE. Sections 1, 2, and 3 of this Act are effective as provided in section 6 and are ineffective after December 31, 1989.

Approved April 24, 1987
 Filed April 27, 1987

CHAPTER 19

HOUSE BILL NO. 1019
(Committee on Appropriations)

COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS

AN ACT making an appropriation for defraying the expenses of the commissioner of university and school lands of the state of North Dakota; to authorize the industrial commission acting as the North Dakota building authority to issue evidences of indebtedness for payment of the loans, accrued interest, and special assessments on the old Dickinson experiment station; to provide for a transfer from the lignite research fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds derived from the state lands maintenance fund and other income to the commissioner of university and school lands of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 785,037
Operating expenses	275,271
Data processing	135,985
Equipment	23,078
Other grants	100,000
Foreclosed properties management	89,000
Contingency fund	20,000
Total special funds	<u>\$1,428,371</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION. The moneys herein appropriated for salaries and wages for new positions shall be made available only after certification to the executive office of the budget that the additional employees allowed are actually in the employ of the state.

SECTION 4. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission may issue evidences of indebtedness under North Dakota Century Code chapter 54-17.2 in any amount up to but not exceeding \$7,204,000, to defray project costs associated with the payment of the loans, accrued interest, and special assessments on the old Dickinson experiment station, now known as the state addition to the city of Dickinson, and the working ranch unit, hereby declared to be in the public interest, during the biennium beginning on the effective date of this section, and ending June 30, 1989. For purposes of this Act, the term "project", as defined by section 54-17.2-01, includes the payment of the loans, accrued interest, and special assessments on the old Dickinson experiment station and working ranch unit. The evidences of indebtedness must be secured by the real estate of the various experiment stations under the direction of the board of higher education and are not a general obligation of the state of North Dakota. The proceeds received by the industrial commission from the sale of evidences of indebtedness and lease rental payments, and any other moneys received by the industrial commission or the state from revenue generated by the project authorized by this section are hereby appropriated for the project and the payment of lease rentals for the project. Proceeds from the sale of the old Dickinson experiment station pursuant to section 6 of this Act must be used for the payment of the authorized evidences of indebtedness. The industrial commission, board of higher education, and board of university and school lands shall execute all transactions, and exercise all powers and functions, necessary and appropriate to carry out the purposes of this section.

*** SECTION 5. LIGNITE DEVELOPMENT RESEARCH - APPROPRIATION - TRANSFER.** There is hereby appropriated and transferred by the industrial commission, at the direction of the office of management and budget, from the lignite research fund as created by the 1987 legislative assembly, to the university of North Dakota, the sum of \$250,000, or so much thereof as may be necessary, for lignite development research projects for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. LEGISLATIVE INTENT REGARDING SALE OF OLD DICKINSON EXPERIMENT STATION PROPERTY. The legislative assembly urges the board of university and school lands to sell the old Dickinson experiment station property at public auction to the highest bidder or bidders.

SECTION 7. EMERGENCY. Section 4 of this Act is hereby declared to be an emergency measure and is in effect upon the filing of this Act with the secretary of state.

Approved April 29, 1987
Filed April 30, 1987

* NOTE: Section 5 of House Bill No. 1019 was vetoed - see Session Laws chapter 767.

CHAPTER 20

HOUSE BILL NO. 1020
(Committee on Appropriations)

GEOLOGICAL SURVEY

AN ACT making an appropriation for defraying the expenses of the geological survey of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the geological survey under the supervision of the board of higher education of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,381,697
Operating expenses	296,208
Equipment	<u>20,300</u>
Total general fund appropriation	\$1,698,205

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION. There is hereby appropriated to the geological survey any federal funds that become available for the purposes of monitoring the underground injection control program, monitoring coal exploration drilling, and participating in the COGEOMAP program with the U.S. Geological Survey for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 15, 1987
Filed April 15, 1987

CHAPTER 21

HOUSE BILL NO. 1021
(Committee on Appropriations)

INDUSTRIAL COMMISSION

AN ACT making an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$ 2,128,159
Operating expenses	608,505
Data processing	121,980
Equipment	47,980
Interest buydown	2,000,000
Contingency	10,000
Total all funds	\$ 4,916,624
Less estimated income	2,010,000
Total general fund appropriation	\$ 2,906,624

Subdivision 2.

BANK OF NORTH DAKOTA

Salaries and wages	\$ 8,007,177
Operating expenses	4,909,577
Data processing	3,267,380
Equipment	544,725
Contingency	300,000

Total appropriation from Bank of North Dakota fund \$17,028,859

Subdivision 3.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$ 8,675,097
Operating expenses	5,644,163
Agriculture promotion	75,000
Export trading company	200,000
Emergency fund	500,000
Total appropriation from mill and elevator fund	<u>\$15,094,260</u>

Subdivision 4.

HOUSING FINANCE AGENCY

Salaries and wages	\$ 1,770,838
Operating expenses	575,421
Data processing	226,493
Equipment	19,796
Grants	27,700,000
HFA contingency	100,000
HFA reserve	1,300,000
Total special funds appropriation	<u>\$31,692,548</u>
Grand total general fund appropriation H.B. 1021	\$ 2,906,624
Grand total special funds appropriation H.B. 1021	\$65,875,667
Grand total all funds appropriation H.B. 1021	\$68,782,291

SECTION 2. APPROPRIATION. There is hereby appropriated from the abandoned oil and gas well plugging and site restoration fund in the state treasury all funds available and which may become available, or so much thereof as may be necessary, to the state industrial commission, for the purpose of entering into contracts for the plugging or replugging of oil and gas wells and the reclamation of abandoned well sites for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 4 of section 1 of this Act, there is hereby appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. APPROPRIATION. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is hereby appropriated with the approval of the emergency commission, the sum of \$50,000, or so much thereof as may be necessary, which may become available to the commission from bonds issued under chapters 4-36 and 54-17.2 and section 54-17-25 of the North Dakota Century Code, for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 5. APPROPRIATION - TRANSFER. The amount appropriated in subdivision 1 of section 1 of this Act to the industrial commission for the salaries and wages line item includes

\$10,000 which shall be transferred from the lands and minerals trust fund for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 7. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$3,000,000 from the accumulated and undivided profits of the North Dakota mill and elevator association. Such moneys shall be transferred during the biennium beginning July 1, 1987, and ending June 30, 1989, upon order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1988.

SECTION 8. TRANSFER. The amount of \$2,000,000, or so much thereof as is necessary, for the line item entitled interest buydown and included in the estimated income line item in section 1 of this Act is hereby appropriated and transferred from the fire and tornado fund to the interest rate buydown fund for the biennium beginning July 1, 1987, and ending June 30, 1989. Upon expiration of this appropriation, the funds which remain in the interest rate buydown fund must be returned to the fire and tornado fund. Any interest generated from the interest rate buydown fund must be transferred to the fire and tornado fund upon expiration of this appropriation.

SECTION 9. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$12,000,000 from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium beginning July 1, 1987, and ending June 30, 1989, upon order of the industrial commission.

SECTION 10. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 22

HOUSE BILL NO. 1022
(Committee on Appropriations)

STATE HISTORICAL BOARD

AN ACT making an appropriation for defraying the expenses of the state historical board of the state of North Dakota; and to authorize the industrial commission to obtain financing from the Bank of North Dakota for international peace garden projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state historical board of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

STATE HISTORICAL BOARD

Salaries and wages	\$2,668,403
Operating expenses	864,784
Data processing	14,100
Equipment	16,895
Capital improvements	88,800
Grants, benefits, and claims	500,000
Total all funds	<u>\$4,152,982</u>
Less estimated income	940,352
Total general fund appropriation	<u>\$3,212,630</u>

Subdivision 2.

INTERNATIONAL PEACE GARDEN

Grants, benefits, and claims	\$ 628,592
Total general fund appropriation	<u>\$ 628,592</u>
Grand total general fund appropriation H.B. 1022	\$3,841,222
Grand total special fund appropriation H.B. 1022	\$ 940,352
Grand total all funds H.B. 1022	<u>\$4,781,574</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION. The superintendent of the North Dakota state historical board is authorized to offer up to \$50,000 of the operating expenses line item appropriated in section 1 of this Act to the North Dakota humanities council, inc., in expectation of return of the appropriation and matching funds from the national endowment for the humanities. Any such funds that may be received by the superintendent are hereby appropriated, subject to emergency commission approval, to the state historical board for the development of exhibits at the heritage center.

SECTION 4. PROJECT AUTHORIZATION - BANK OF NORTH DAKOTA PURCHASE OF EVIDENCES OF INDEBTEDNESS - APPROPRIATION. The industrial commission, acting as the state building authority, shall arrange for the funding of the projects authorized by this section, hereby declared to be in the public interest, including utilization of \$257,000 in general fund appropriations contained in subdivision 2 of section 1 of this Act, any federal or other funds made available for the construction of the projects, and issuance of evidences of indebtedness under North Dakota Century Code chapter 54-17.2, during the biennium beginning July 1, 1987, and ending June 30, 1989. The industrial commission may offer evidences of indebtedness issued under this section for sale only to the Bank of North Dakota at a price that is as representative as possible of the current market interest rates for comparable securities purchased by the Bank of North Dakota, taking into consideration in the determination of price the costs of issuance including future administrative and other costs associated with credit enhancements. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 1987, and ending June 30, 1989, for the following projects:

AGENCY	TYPE OF FACILITY	ACQUISITION FUNDS
State historical society	International peace garden - renovation of food service facility	\$430,000
State historical society	International peace garden - wastewater disposal system	185,000
Total capital improvements		<hr/> \$615,000

Approved April 21, 1987
 Filed April 27, 1987

CHAPTER 23

HOUSE BILL NO. 1023
(Committee on Appropriations)

PUBLIC EMPLOYEES RETIREMENT SYSTEM

AN ACT making an appropriation for defraying the administrative costs of the public employees retirement system of the state of North Dakota; to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to the uniform group health insurance program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the public employees retirement fund in the state treasury, not otherwise appropriated, to the public employees retirement system of the state of North Dakota for the purpose of defraying the administrative costs of the divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 885,644
Operating expenses	314,044
Data processing	416,022
Equipment	6,000
Contingency	50,000
Total appropriation from public employees retirement fund	<u>\$1,671,710</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Ownership and confidentiality of the uniform group health insurance medical records of employees, retirees, and dependents. The medical records and related data of the employees, retirees, and dependents, obtained as the result of enrollment in the uniform group insurance program, are the property of the public employees retirement system. The records and data are confidential and are not public records. However, the board may allow administrators of administrative services only contracts or third-party administrators contracts access to the records and data where it is required in the performance of the administrator's duties pursuant to the contract. No administrator may be held liable for furnishing to the board information with respect to any patient, or any physician, hospital, or other health care provider.

SECTION 4. EMERGENCY. Section 3 of this Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 24

HOUSE BILL NO. 1024
(Committee on Appropriations)

TEACHERS' FUND FOR RETIREMENT

AN ACT making an appropriation for defraying the administrative costs of the teachers' fund for retirement of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the teachers' fund for retirement in the state treasury, not otherwise appropriated, to the teachers' fund for retirement of the state of North Dakota for the purpose of defraying the administrative costs thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 478,679
Operating expenses	315,247
Data processing	184,741
Equipment	4,737
Contingency	50,000
Total appropriation from teachers' fund for retirement	<u>\$1,033,404</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 25

HOUSE BILL NO. 1025
(Committee on Appropriations)

JOB SERVICE NORTH DAKOTA

AN ACT making an appropriation for defraying the expenses of job service North Dakota and divisions thereof of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in special funds in the state treasury, not otherwise appropriated, derived from federal funds and other income, to job service North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

JOB SERVICE NORTH DAKOTA	
Salaries and wages	\$25,987,971
Operating expenses	5,765,049
Equipment	680,000
Grants	<u>10,070,000</u>
Total special funds appropriation	\$42,503,020

Subdivision 2.

NORTH DAKOTA OASIS AND SOCIAL SECURITY	
Salaries and wages	\$ 166,433
Operating expenses	102,300
Equipment	<u>2,000</u>
Total appropriation from social security contribution fund	\$ 270,733
Grand total special funds appropriation H.B. 1025	\$42,773,753

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in subdivision 1 of section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 26

HOUSE BILL NO. 1026
(Committee on Appropriations)

WORKER'S COMPENSATION BUREAU

AN ACT making an appropriation for defraying the expenses of the workmen's compensation bureau and the divisions thereof of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and the workmen's compensation fund in the state treasury, not otherwise appropriated, to the workmen's compensation bureau of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

WORKMEN'S COMPENSATION BUREAU

Salaries and wages	\$3,281,357
Operating expenses	1,535,501
Data processing	684,114
Equipment	179,176
Contingency	45,000
Total appropriation from workmen's compensation fund	<u>\$5,725,148</u>

Subdivision 2.

CRIME VICTIMS REPARATION

Grants	<u>\$ 314,160</u>
Total	\$ 314,160
Less estimated income	90,000
Total general fund appropriation	<u>\$ 224,160</u>
Grand total general fund appropriation H.B. 1026	\$ 224,160
Grand total special funds appropriation H.B. 1026	\$5,815,148
Grand total all funds appropriation H.B. 1026	<u>\$6,039,308</u>

SECTION 2. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 27

HOUSE BILL NO. 1027
(Committee on Appropriations)

SOIL CONSERVATION COMMITTEE AND DISTRICTS

AN ACT making an appropriation for defraying the expenses of the soil conservation committee and soil conservation districts of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the soil conservation committee and districts of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$304,368
Operating expenses	270,277
Data processing	200
Equipment	1,500
Grants, benefits, and claims	<u>286,123</u>
Total general fund appropriation	\$862,468

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the court or courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 28

HOUSE BILL NO. 1028
(Committee on Appropriations)

VARIOUS DEPARTMENTS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various departments and institutions of the state of North Dakota; to provide for authorization to accept and expend income; to provide legislative intent regarding deinstitutionalization court monitor expenses; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, the sums as hereinafter provided or so much thereof as may be necessary. These sums shall increase the general fund and special funds appropriation authority enacted by the forty-ninth legislative assembly of the state of North Dakota as adjusted by the allotment process to the stated departments and institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the period beginning January 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

SECRETARY OF STATE

Central notice system	\$ 150,000
Total special funds appropriation	<u>\$ 150,000</u>

Subdivision 2.

JOB SERVICE NORTH DAKOTA

Operating expenses	\$ 130,000
Total general fund appropriation	<u>\$ 130,000</u>

Subdivision 3.

GRAFTON STATE SCHOOL

Salaries and wages	\$2,686,245
Operating expenses	<u>1,272,738</u>
Total special funds appropriation	<u>\$3,958,983</u>

Subdivision 4.

SAN HAVEN

Salaries and wages	\$ 414,144
Operating expenses	<u>276,296</u>
Total special funds appropriation	\$ 690,440
Grand total general fund appropriation H.B. 1028	\$ 130,000
Grand total special funds appropriation H.B. 1028	\$4,799,423
Grand total all funds appropriation H.B. 1028	\$4,929,423

SECTION 2. INCOME AUTHORITY. The state treasurer is hereby authorized to accept income from the sale of liquor decals required by administrative rule for liquor and beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler. This income may be expended for the administration of this requirement with the authorization of the emergency commission for the period beginning January 1, 1987, and ending June 30, 1989.

SECTION 3. LEGISLATIVE INTENT - COURT MONITOR EXPENSES. It is the intent of the legislative assembly that any additional payments required for the expenses of the deinstitutionalization court monitor for the period January 1, 1987, to June 30, 1987, be paid from funds on deposit with the university of North Dakota medical center accumulated from previous state payments made for the deinstitutionalization court monitor.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 29

HOUSE BILL NO. 1058
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE WING IMPROVEMENTS

AN ACT providing an appropriation to the legislative assembly for improvements to the state capitol; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the interest and income fund of the capitol building fund in the state treasury, not otherwise appropriated, the sum of \$55,880, or so much thereof as may be necessary, to the legislative assembly for improvements to the legislative wing of the state capitol. The legislative council or its designee shall administer this Act. The provisions of chapter 48-10 and section 54-44.1-11 do not apply to this appropriation.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved February 11, 1987
Filed February 12, 1987

CHAPTER 30

HOUSE BILL NO. 1222
(Committee on Appropriations)
(At the request of the North Dakota Centennial Commission)

CENTENNIAL COMMISSION GRANTS

AN ACT making an appropriation to the North Dakota centennial commission for the purpose of making grants to centennial projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much thereof as may be necessary, to the North Dakota centennial commission for the purpose of making grants, to be allocated among the counties in the state for distribution for projects within the county, to finance centennial projects for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 31

HOUSE BILL NO. 1295
(Representatives O. Hanson, Watne, Gunsch)
(Senators W. Meyer, Lips)

LEAFY SPURGE CONTROL

AN ACT to amend and reenact subsection 4 of section 63-01.1-06.2 of the North Dakota Century Code, relating to the use of funds appropriated for the leafy spurge control program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 63-01.1-06.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Any legislative appropriation for the leafy spurge control program of sections 63-01.1-06.1 through 63-01.1-06.3 shall be expended ~~only~~ for reimbursement of the cost of leafy spurge control according to this section to private landowners, including lessees, tenants, renters, or operators of private land, county weed boards, or cities, and for other leafy spurge programs as the commissioner determines to be necessary.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$540,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of defraying the expenses of the leafy spurge control program, for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 32

HOUSE BILL NO. 1516
(Representatives Laughlin, Larson)
(Senator Wogsland)

PRIDE OF DAKOTA LOGO

AN ACT to provide an appropriation to the commissioner of agriculture for the Pride of Dakota logo promotion program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000, or so much thereof as may be necessary, to the commissioner of agriculture for administration of the Pride of Dakota logo promotion program for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 33

HOUSE BILL NO. 1534
(Hill, C. Nelson)

ELECTRONIC MEDIA COURSES

AN ACT providing an appropriation to the superintendent of public instruction for the purpose of establishing programs offering school districts the funds to provide instructional courses by electronic media.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as necessary, to the superintendent of public instruction to offer school districts the funds to establish programs in rural areas to provide foreign language, math, science, and other courses through programs transmitted by electronic media during the period beginning July 1, 1987, and ending June 30, 1989.

SECTION 2. PROGRAM AND SCHOOL DISTRICT SELECTION. The North Dakota curriculum council shall advise the superintendent of public instruction on the selection of electronic media programs to be purchased and on the selection of school districts that will receive funds pursuant to this Act.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that appropriated funds be used to assist school districts in purchasing equipment and programs for instruction via electronic media.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 34

HOUSE BILL NO. 1544
(Gunsch, Knell, O. Hanson, Anderson, Goetz)

ENERGY DEVELOPMENT IMPACT OFFICE

AN ACT making an appropriation for defraying the expenses of the energy development impact office of the state of North Dakota, providing legislative intent regarding energy development impact grants and the energy development impact office, and providing for a contingency loan from the coal trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund, not otherwise appropriated, to the energy development impact office of the state of North Dakota, for the purpose of defraying the expenses of that office, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 151,972
Operating expenses	32,721
Grants	2,000,000
ANG plant closure contingency	5,000,000
Total all funds	\$7,184,693
Less estimated income	5,000,000
Total general fund appropriation	\$2,184,693

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. GRANTS. Section 54-44.1-11 of the North Dakota Century Code shall not apply to appropriations made for grants in section 1 of this Act nor to the grants line item in chapter 28 of the 1985 Session Laws.

SECTION 4. CONTINGENCY LOAN. The amount of \$5,000,000 appropriated in section 1 of this Act for an ANG plant closure contingency line item shall be made available to the energy development impact office only if the ANG plant closes. If the ANG plant closes, the board of university and school lands shall lend \$5,000,000 from the coal trust fund, or so much thereof as may be necessary, to the energy development impact office for the purpose of providing grants to political subdivisions which are affected by the plant closure.

SECTION 5. LEGISLATIVE INTENT - ENERGY DEVELOPMENT IMPACT OFFICE. It is the intent of the legislative assembly that the energy development impact office continue to function as a separate state agency during the 1987-89 biennium.

SECTION 6. LEGISLATIVE INTENT - GRANTS LINE ITEM. The grants line item in section 1 of this Act totaling \$2,000,000 from the general fund is to be used for oil development impact grants.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 35

HOUSE BILL NO. 1590
(Representatives Peterson, Kingsbury, Nowatzki)
(Senators Nelson, Lips)

REVENUE SHARING AND PERSONAL PROPERTY TAX REPLACEMENT

AN ACT to provide for allocation of a portion of sales, use, and motor vehicle excise tax collections to personal property tax replacement and state revenue sharing; to amend and reenact section 57-58-01 of the North Dakota Century Code, relating to personal property tax replacement; to repeal section 54-27-20.1 of the North Dakota Century Code, relating to determination of state revenue sharing; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Allocation of sales, use, and motor vehicle excise tax revenues to revenue sharing and personal property tax replacement. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to sixty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. The state aid distribution fund must be allocated, subject to legislative appropriation, as follows:

1. Fifty percent of the revenues must be allocated in the last month of each quarterly period for state revenue sharing as provided in sections 54-27-20.2 and 54-27-20.3.
2. Fifty percent of the revenues must be allocated for personal property tax replacement as provided in section 57-58-01.

SECTION 2. AMENDMENT. Section 57-58-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-58-01. Distribution to counties and local subdivisions. It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-02-08. On or before February 1, 1971, the county auditor of each county shall certify to the state tax commissioner the total amount of taxes levied in the year 1968 for the state, county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes, and levies voted by the people, new or present levies increased by legislative action of such county on those items of personal property exempt under the provisions of section 57-02-08, and, in addition, the total valuation of real estate and taxes levied on real estate for the year 1968. On or before June 1, 1980, and each year thereafter, the state tax commissioner shall certify for payment to the state treasurer an amount, for payment by the state treasurer to each county, determined to be due such county based upon the personal property taxes levied in the year 1968 for the political subdivisions herein mentioned on the items of personal property exempt from the personal property tax under the provisions of section 57-02-08, the per capita school tax under the provisions of former section 57-15-23, and the grain tax under the provisions of former chapter 57-03, together with any adjustments to be made in the manner hereinafter provided. Within sixty days after the receipt of the revenue as provided by this section, the county treasurer shall allocate and remit to the county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes that amount of revenue which is received from the state in the same ratio as he would have distributed the revenue from the personal property tax, adjusting such amount by any increase or decrease in real property taxes as levied by each taxing authority according to the formula hereinafter provided. Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision. In the years after 1971, payments to the counties under this section shall be made based upon ninety-five percent of such payment for 1971 together with a growth factor which shall be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each seven dollar increase in real property taxation within a county, the state shall contribute an additional one dollar over that amount which equals ninety-five percent of such payment in the base year. For each seven dollar decrease in real property taxation within a county, the state shall contribute one dollar less than that amount which equals ninety-five percent of such payment in the base year.

On or before June 1, 1980, and each year thereafter, the state tax commissioner shall certify to the state treasurer the amount determined to be due to the state based upon the personal property

taxes levied in the year 1968 for the North Dakota state medical center. The amount so certified shall be computed in accordance with the formula provided in this section for computing the amounts to be certified and paid to the counties. The state treasurer upon receiving the certification from the tax commissioner shall transfer from the general fund to the credit of the North Dakota state medical center the amount so certified.

Any political subdivision which levied taxes on taxable property in the year 1970 for a specific fund or purpose for which a levy was not made by it in the year 1968 shall be entitled to a distribution of revenue from the state in the year 1971 for any such levy. The amount of such distribution shall be determined as follows: the county auditor shall certify to the state tax commissioner as soon as possible after March 30, 1971, the amount of each such levy made by and spread for each political subdivision on taxable real property in the county in the year 1970; the tax commissioner shall forthwith determine the correctness of such amounts and certify to the state treasurer for immediate payment to the county an amount that is determined by dividing the total of such levies made and spread in 1970 on taxable real property in the county by the growth factor that is provided in the first paragraph of this section; the county treasurer within fifteen days after the receipt of such revenue from the state treasurer shall allocate and remit to each political subdivision its proportionate amount of that revenue.

If the classification of any property for taxation purposes is changed from real to personal property or from personal to real property because of legislative or judicial action, the county auditor of the county in which the property is located shall forthwith certify to the tax commissioner the amount of real estate taxes or personal property taxes that was levied on all such property by each taxing district in the year 1968 and in any other year thereafter that the tax commissioner may request. The tax commissioner, in determining the amount to be certified to the state treasurer for payment to the county pursuant to this section, shall adjust the amounts of taxes certified by the county auditor as levied on real property and on personal property in 1968 and in any other year as may be necessary by adding to or subtracting from each such amount the taxes on the reclassified property so that the distribution by the state to the county will be determined as though such property had been taxed in 1968 and all later years in the classification into which it was reclassified.

Notwithstanding the other provisions of this section, personal property tax replacement is an amount as determined under section 1 of this Act, subject to legislative appropriation. If moneys appropriated by the legislative assembly for personal property tax replacement are not in the amount that would be provided under this section for distribution, the tax commissioner and the state treasurer shall provide for pro rata distribution of available funds on the basis of the formula contained in this section.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$42,735,900, or so much thereof as may be necessary, to the state treasurer for distribution in equal amounts with fifty percent allocated for state revenue sharing and fifty percent allocated for personal property tax replacement for the biennium beginning July 1, 1987, and ending June 30, 1989. If moneys appropriated in this section for personal property tax replacement are not in the amount that would be provided for distribution under section 57-58-01, the tax commissioner and the state treasurer shall provide for pro rata distribution of available funds on the basis of the distribution formula in section 57-58-01.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the legislative assembly that revenue sharing allocations for the fiscal year beginning July 1, 1987, be made in a manner that provides greater allocations to political subdivisions during the first two quarters of the fiscal year than during the second two quarters of the fiscal year.

SECTION 5. REPEAL. Section 54-27-20.1 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 6. EFFECTIVE DATE. Section 1 of this Act is effective for sales, use, and motor vehicle excise tax collections received by the state tax commissioner after June 30, 1989. Section 2 of this Act is effective July 1, 1989.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 36

HOUSE BILL NO. 1674
(Representatives Kingsbury, Hoffner)
(Senators Stenehjem, Shea)
(Approved by the Committee on Delayed Bills)

UND AEROSPACE SCIENCE TRAINING FACILITY

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds or utilize private, federal, or other sources of funds for the construction of an aerospace science training facility at the university of North Dakota; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. BOARD OF HIGHER EDUCATION - AUTHORIZATION TO CONSTRUCT AEROSPACE SCIENCE TRAINING FACILITY WITH PRIVATE, FEDERAL, OR OTHER SOURCES OF FUNDS - APPROPRIATION. The state board of higher education may utilize private, federal, or other sources of funds, including the execution of a loan from the Bank of North Dakota, to construct an aerospace science training facility at the university of North Dakota. There is hereby appropriated to the state board of higher education from any moneys that become available from private, federal, or other sources of funds the sum of \$4,500,000, or so much thereof as may be necessary, for the purpose of constructing an aerospace science training facility at the university of North Dakota for the biennium beginning on the effective date of this Act, and ending June 30, 1989.

SECTION 2. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - APPROPRIATION. As an alternative to the funding provided in section 1 of this Act, the state board of higher education, in accordance with chapter 15-55, may issue and sell self-liquidating, tax-exempt bonds in any amount up to but not exceeding \$4,500,000, for the purpose of constructing a revenue-producing aerospace science training facility at the university of North Dakota. Bonds issued pursuant to this section are not a general obligation of the state of North Dakota. The proceeds resulting from the sale of bonds, or so much thereof as may be necessary, are hereby appropriated for the purpose of constructing an aerospace science training facility at the university of North Dakota for the biennium beginning on the effective date of this Act, and ending June 30, 1989. Any unexpended balances for the sale of bonds authorized by this section must be placed in sinking funds for the retirement of the authorized bonds.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 37

HOUSE BILL NO. 1902
(Select Committee on Appropriations)
(At the request of the Director of Institutions)
(Approved by the Committee on Delayed Bills)

**GRAFTON STATE SCHOOL — SAN HAVEN REVENUE
TRANSFER**

AN ACT to provide authority to the Grafton State School to transfer excess revenue to San Haven; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Authority to transfer excess revenue. The authority is hereby granted for the transfer of any excess revenue received by the Grafton State School to San Haven up to the appropriation authority granted San Haven for the 1985-87 biennium. This authority is granted in the event that the amount of other income received by San Haven is less than the amount included in its appropriation for the 1985-87 biennium, including any deficiency appropriation that may be passed for the 1985-87 biennium.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective on December 1, 1986.

Approved December 5, 1986
Filed December 8, 1986

CHAPTER 38

SENATE BILL NO. 2002
(Committee on Appropriations)

SUPERINTENDENT OF PUBLIC INSTRUCTION

AN ACT to provide an appropriation for defraying the expenses of the superintendent of public instruction of the state of North Dakota; to provide for a transfer of funds from the displaced homemaker fund; to provide an appropriation for establishing electronic media instruction in school districts and to provide for a transfer of funds from the interest income of the state school construction fund; to provide an appropriation for developing computer software to promote the study of North Dakota and to provide for a transfer from the interest income of the state school construction fund; to provide for a legislative council study of education finance issues; to create and enact a new section to chapter 15-21 and a new subsection to section 15-60-03 of the North Dakota Century Code, providing for an adult basic and secondary education fund and a continuing appropriation and relating to use of interest income from the state school construction fund; to amend and reenact subsection 2 of section 15-40.1-06 of the North Dakota Century Code as amended by Senate Bill No. 2904 as approved by the fiftieth legislative assembly, and sections 15-40.1-16 and 57-19-06 of the North Dakota Century Code, relating to the educational support per pupil and state transportation aid payments to schools, and school district authority to withdraw from the special reserve fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the superintendent of public instruction of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 4,712,629
Operating expenses	3,006,752
Data processing	349,125
Equipment	50,742
Grants - foundation aid	354,609,408
Grants - tuition apportionment	43,100,000
Grants - special education	24,176,529
Grants - school food program	1,116,000
Grants - adult basic education	400,000
Grants - motorcycle safety	350,000
Grants - displaced homemakers	235,246
Grants - chemical abuse	20,000
Grants - boarding care	1,180,650
Grants - other grants	61,383,036
Teacher center network	200,000
Total all funds	\$495,590,117
Less estimated income	111,413,253
Total general fund appropriation	\$384,176,864

SECTION 2. INTENT. It is the intent of the legislative assembly that the sum of \$43,100,000, or such greater or lesser sums as become available, included in the grants - tuition apportionment and estimated income line items in section 1 of this Act, be distributed by the office of management and budget out of any moneys in the state tuition fund in the state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and North Dakota Century Code chapter 15-44 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$247,630, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred to the superintendent of public instruction for the purpose of providing services for displaced homemakers as provided in North Dakota Century Code chapter 14-06.1 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. APPROPRIATION - TRANSFER. There is hereby appropriated, and shall be transferred, out of any interest income in the state school construction fund, not otherwise appropriated, the sum of \$400,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of making grants to school districts for electronic media instruction for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 5. APPROPRIATION - TRANSFER. There is hereby appropriated, and shall be transferred, out of any interest income in the state school construction fund, not otherwise appropriated, the sum of \$100,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of developing computer software to promote the study of North Dakota in light of

the 1989 centennial celebration for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 7. ADDITIONAL INCOME. The superintendent of public instruction may seek additional federal and other income for support of the teacher center network and to establish programs to provide instructional courses by electronic media for the biennium beginning July 1, 1987, and ending June 30, 1989. The sum of \$200,000, or so much thereof as may be necessary, received for these projects can be expended only by authorization of the emergency commission.

SECTION 8. A new section to chapter 15-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Adult basic and secondary education fund - Continuing appropriation. The superintendent of public instruction may receive and accept any grant, gift, devise, or bequest of any money from any private or public source for adult basic and secondary education programs. Any money received for adult basic and secondary education programs by grant, gift, devise, or bequest not specifically appropriated by the legislative assembly must be deposited in the adult basic and secondary education fund in the state treasury. All moneys in the fund, and any interest upon moneys in the fund, are hereby appropriated to the superintendent of public instruction for the purpose of administering and implementing adult basic and secondary education programs. Any funds appropriated under this section are not subject to section 54-44.1-11.

SECTION 9. AMENDMENT. Subsection 2 of section 15-40.1-06 of the 1985 Supplement to the North Dakota Century Code as amended by Senate Bill No. 2904, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

2. a. The educational support per pupil during the first year of the ~~1985-87~~ 1987-89 biennium shall be one thousand four hundred ~~twenty-five~~ dollars and for the second year of the biennium the educational support per pupil shall be one thousand ~~three~~ four hundred ~~seventy twelve~~ dollars and shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in sections 15-40.1-07 and 15-40.1-08.
- b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25

shall be supported in the amount of two hundred twenty dollars, which shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07.

SECTION 10. AMENDMENT. Section 15-40.1-16 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-16. Aid for transportation. There shall be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school within the incorporated limits of a city, the following amounts:

1. For schoolbuses and school vehicles transporting pupils who live outside the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to ~~thirty-eight~~ thirty-five and one-half cents during each year of the ~~1985-87~~ 1987-89 biennium for vehicles having a capacity of nine or fewer pupils and ~~seventy-six~~ seventy-two cents per mile [1.61 kilometers] for each year of the ~~1985-87~~ 1987-89 biennium for schoolbuses having a capacity of ten or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of ten or more pupils shall be entitled to an amount equal to nineteen cents per day for each public school pupil living outside the city limits who is transported in such buses.
2. For pupils who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to nine and one-half cents per pupil per one-way trip. However, no payment shall be made under this subsection for a student who rode on a vehicle for which payments are claimed under subsection 1.

The mileage payments provided for in this section shall be made to each school district for transporting pupils to and from school. Such payments shall be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to the compliance with the laws of this state in regard to schoolbuses and their drivers shall be made in such manner and in such detail as the superintendent of public instruction may require at the time an application is made for payments provided under this section. The superintendent of public instruction shall do an onsite audit of the books and records, regarding transportation cost, pupils transported and miles traveled, of at least ten school districts each fiscal year to verify compliance with section 15-40.1-16.

SECTION 11. A new subsection to section 15-60-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Interest income from the state school construction fund may be used to promote the study of North Dakota and to make grants to school districts within the limits of legislative appropriations to enable school districts to establish electronic media instruction. The state board of public school education shall establish the criteria for making grants to school districts. No grant may exceed fifty percent of the cost of implementing electronic media instruction. To be eligible to receive a grant, a school district must provide fifty percent matching funds. The superintendent of public instruction shall administer the grants.

SECTION 12. Section 57-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-19-06. Special reserve fund - How and when used.

1. Whenever collections from the taxes levied for the current budget are insufficient to meet the requirements of ~~such~~ the budget for teacher salaries, heat, light, and fuel, a majority of the governing body of the school district, by resolution, may provide for the issuance of vouchers directed to the county treasurer, drawing on funds in ~~said~~ the special reserve fund of ~~such~~ the district. ~~Such~~ The voucher may be substantially in the same form as a warrant, but ~~shall~~ may not be a negotiable instrument, and ~~shall~~ must direct the county treasurer to pay over to the school district from the special reserve fund the amount of money specified in the voucher. Subject to the limitations in the ~~next~~ section 57-19-07, the county treasurer shall transfer from the special reserve fund to the school district general fund the sum so specified, and shall enter ~~such~~ the voucher in a book to be known as the special reserve fund voucher register in the order in which they are issued.
2. The governing body of the school district, by resolution, may withdraw without repayment fifty percent of the funds from the special reserve fund of the school district.

SECTION 13. LEGISLATIVE COUNCIL STUDY OF EDUCATION FINANCE ISSUES. An interim legislative council committee, consisting of eight members of the legislative assembly and three professional educators, including one educator from each of the following: a small, medium, and large school district, to be selected by the legislative council, shall conduct a study during the 1987-88 interim of education finance issues, including but not limited to the issues of adequate funding for school districts, the amount of money spent by school districts for noninstructional purposes,

inequities in the distribution of transportation aid to schools, local effort in support of schools, other funding sources including federal programs and energy taxes revenue, and the special needs of schools in sparsely populated areas of the state.

SECTION 14. CONTINGENT SEPARATE AND ADDITIONAL PER-PUPIL PAYMENT. The superintendent of public instruction shall distribute a separate and additional per-pupil payment from any unspent amount appropriated to the grants - foundation aid program for the biennium beginning July 1, 1987, and ending June 30, 1989, in the May 1, 1989, foundation aid payment to schools. Any payment made under this section must be on a weighted basis to be determined according to chapter 15-40.1.

SECTION 15. APPROPRIATION - TRANSFER TO REVOLVING PRINTING FUND. The amount appropriated in section 1 of this Act for the operating expenses line item includes \$10,000 from the general fund which is to be transferred to the revolving printing fund to print and distribute the North Dakota school code supplement for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 16. LEGISLATIVE INTENT - NORTH DAKOTA SCHOOL CODE SUPPLEMENT. The superintendent of public instruction shall issue one set of the North Dakota school code supplement to each North Dakota school district without charge and may issue the supplement to other interested parties for the cost of printing and distribution of the supplement. The amount received for sale of the supplement must be deposited in the superintendent of public instruction revolving printing fund.

SECTION 17. EXPIRATION DATE. Sections 11 and 12 of this Act are effective through June 30, 1989, and after that date are ineffective.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 39

SENATE BILL NO. 2003
 (Committee on Appropriations)

DIVISION OF INDEPENDENT STUDY

AN ACT making an appropriation for defraying the expenses of the division of independent study of the state of North Dakota; and to amend and reenact section 15-19-04 of the North Dakota Century Code, relating to oversight of the high school correspondence program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income to the division of independent study of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,228,992
Operating expenses	354,171
Equipment	100,000
Total all funds	<u>\$1,683,163</u>
Less estimated income	<u>1,174,271</u>
Total general fund appropriation	<u>\$ 508,892</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. AMENDMENT. Section 15-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-19-04. Duty of teachers, county and state officers, and institutions. The state board of public school education and the superintendent or

a member of the department of public instruction designated by ~~him~~ the superintendent shall approve the content of courses offered, requirements for certification of teachers, credits granted for each course, and all other things necessary to integrate the correspondence program into other high school programs administered or supervised by the department of public instruction. The division of independent study may advertise its correspondence program, however, the state board of public school education and the superintendent of public instruction shall ensure that the program shall in no way compete with the public schools of this state for the enrollment of students, encourage students to leave the public schools, or duplicate the facilities of the public schools through offering high school correspondence courses to students having access to such courses in the public schools.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 40

SENATE BILL NO. 2004
(Committee on Appropriations)

OFFICE OF MANAGEMENT AND BUDGET

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget of the state of North Dakota; providing an exemption to the provisions of section 54-44.1-11 of the North Dakota Century Code; and to amend and reenact sections 54-16-11.1 and 54-27-23 of the North Dakota Century Code, relating to the emergency commission authority to increase revenue appropriation authority for intergovernmental service fund agencies and budget section approval of office of management and budget cash flow financing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Salaries and wages	\$ 4,292,929
Operating expenses	3,556,302
Data processing	2,220,573
Equipment	58,975
Grants	25,014,450
Boys and girls clubwork	53,000
State memberships	173,154
Total all funds	<u>\$35,369,383</u>
Less estimated income	29,087,856
Total general fund appropriation	<u>\$ 6,281,527</u>

Subdivision 2.

CENTRAL DATA PROCESSING

Salaries and wages	\$ 6,753,150
Operating expenses	21,764,014
Equipment	1,504,340
Total special funds appropriation	<u>\$30,021,504</u>

Subdivision 3.

CENTRAL DUPLICATING SERVICES

Salaries and wages	\$ 723,308
Operating expenses	1,437,329
Data processing	25,000
Equipment	27,000
Total special funds appropriation	<u>\$ 2,212,637</u>
Grand total general fund appropriation S.B. 2004	\$ 6,281,527
Grand total special funds appropriation S.B. 2004	\$61,821,997
Grand total all funds appropriation S.B. 2004	\$68,103,524

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. TRANSFER AUTHORITY. Upon approval of the emergency commission, the director of the office of management and budget may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 4. AMENDMENT. Section 54-16-11.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of the verified petition provided for in section 54-16-10, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for intergovernmental service agencies. Such agencies are limited to central duplicating, central data processing, state communications, surplus property, and central microfilm.

SECTION 5. AMENDMENT. Section 54-27-23 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27-23. Cash flow financing. In order to effectively meet the cyclical cash flow needs of state government, the office of management and budget upon approval of the emergency commission is hereby authorized to issue certificates in anticipation of revenue, notes, or bonds, to special funds on deposit in the state treasury.

Any issue of such certificates, notes, or bonds must be approved by the emergency commission and are to be used for cash flow financing only, and not to offset projected deficits in state finances unless first approved by the budget section of the legislative council. The budget section may approve additional cash flow financing not to exceed eighty percent of estimated general fund revenues relating to sales or production occurring prior to June thirtieth, to be collected in July and August after the end of the biennium. Such additional cash flow financing is only effective for sixty days unless an extension or reapproval is received from the budget section. If a revenue shortfall of greater than five percent occurs, the office of management and budget must order budget allotments under section 54-44.1-12 prior to approval by the budget section of such additional cash flow financing. It is the intent of the legislative assembly that all borrowing must be repaid by the end of biennium. The terms of any specific issue of such certificates, notes, or bonds may not exceed one hundred eighty days from the date of issuance whereupon the principal and interest on the certificates, notes, or bonds shall be paid in full from the state general fund or from another issue of a similar nature. All principal and interest on such issues made during a biennial period shall be repaid in full at the close of the biennial period from the state general fund. When certificates, notes, or bonds are issued for cash flow purposes to funds which otherwise would be invested, with the investment income accruing to the special fund, the certificate shall bear an investment rate of return which shall be agreed upon by the state investment board, and shall be at a level commensurate with the yield to be reasonably expected by such fund if invested in alternate securities.

SECTION 6. ADDITIONAL INCOME. There is hereby appropriated \$500,000 from income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1987, and ending June 30, 1989, for deposit in the appropriate operating funds in the state treasury to be expended with the authorization of the emergency commission.

SECTION 7. EXEMPTION. The data processing appropriation contained in section 1 of chapter 3 of the 1985 Session Laws shall not be subject to the provisions of section 54-44.1-11 of the North Dakota Century Code and any unexpended funds from this appropriation shall be available for continued development and operation of the accounting, management, and payroll systems during the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 41

SENATE BILL NO. 2005
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of the director of institutions of the state of North Dakota and providing for a transfer from the capitol building fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$3,103,333
Operating expenses	3,112,489
Institutional medical fees	300,000
Equipment	28,110
Capital improvements	<u>1,146,300</u>
Total all funds	\$7,690,232
Less estimated income	<u>1,076,300</u>
Total general fund appropriation	\$6,613,932

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. TRANSFER. The amount of \$1,076,300, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the capitol building fund to the director of institutions for the biennium

beginning July 1, 1987, and ending June 30, 1989. However, the amount of the transfer shall be reduced to the extent of private grants and donations received for repairs to the governor's residence.

SECTION 4. CAPITOL BUILDING ADDITION - FEASIBILITY STUDY - COST ESTIMATES. Included in the capital improvements line item in section 1 of this Act is \$15,000 from the capitol building fund to be used for a feasibility study including preliminary drawings and cost estimates for a capitol building addition for additional committee rooms. The director of institutions shall contract for the services and provide progress reports and the final report to the capitol grounds planning commission and the legislative council's legislative procedure and arrangements committee during the 1987-89 biennium.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 42

SENATE BILL NO. 2006
(Committee on Appropriations)

INDUSTRIAL SCHOOL

AN ACT making an appropriation for defraying the expenses of the state industrial school of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the state industrial school under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$4,218,552
Operating expenses	906,298
Equipment	32,044
Capital improvements	981,700
Total all funds	\$6,138,594
Less estimated income	2,276,813
Total general fund appropriation	\$3,861,781

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. PROJECT AUTHORIZATION. The industrial commission may construct and acquire, and issue evidences of indebtedness under North Dakota Century Code chapter 54-17.2 as necessary to defray that portion of the project costs associated with the construction of the following project, hereby declared to be in the public interest, during the biennium beginning July 1, 1987, and ending

June 30, 1989. This project is included in the capital improvements and estimated income line item of section 1 of this Act.

NAME OF AGENCY, DEPARTMENT, OR INSTITUTION	TYPE OF FACILITY	CONSTRUCTION FUNDS
State Industrial School	Kitchen/Dining Facility	\$950,000

The industrial commission shall issue evidences of indebtedness authorized under this section with the condition that lease rental payments need not begin until July 1, 1989. The authority of the industrial commission to issue evidences of indebtedness authorized by this Act ends on June 30, 1989, but the industrial commission shall have continued authority to exercise all other powers granted to it under this Act and to comply with any covenants entered into before that date.

SECTION 4. CONTINUING APPROPRIATION. The moneys received by the industrial commission and the state agencies and institutions from the sale of evidences of indebtedness, lease rental payments, and from revenue generated by projects authorized under section 3 of this Act are hereby appropriated as a continuing appropriation for the acquisition of these authorized projects and the payment of lease rentals for these projects.

Approved April 13, 1987
Filed April 14, 1987

CHAPTER 43

SENATE BILL NO. 2007
(Committee on Appropriations)

SCHOOL FOR THE DEAF AND SCHOOL FOR THE BLIND

AN ACT making an appropriation for defraying the expenses of the school for the deaf and the school for the blind of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the school for the deaf and the school for the blind under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

SCHOOL FOR THE DEAF

Salaries and wages	\$3,050,609
Operating expenses	742,569
Equipment	29,075
Capital improvements	60,000
Total all funds	<u>\$3,882,253</u>
Less estimated income	<u>413,340</u>
Total general fund appropriation	<u>\$3,468,913</u>

Subdivision 2.

SCHOOL FOR THE BLIND

Salaries and wages	\$2,048,830
Operating expenses	437,255
Equipment	12,800
Capital improvements	29,000
Total all funds	<u>\$2,527,885</u>
Less estimated income	<u>358,428</u>
Total general fund appropriation	<u>\$2,169,457</u>
Grand total general fund appropriation S.B. 2007	<u>\$5,638,370</u>

Grand total special funds appropriated S.B. 2007 \$ 771,768
Grand total all funds appropriated S.B. 2007 \$6,410,138

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 44

SENATE BILL NO. 2008
(Committee on Appropriations)

STATE LIBRARY

AN ACT making an appropriation for defraying the expenses of the state library of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state library under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,118,032
Operating expenses	787,462
Data processing	8,369
Equipment	2,580
Grants, benefits, and claims	<u>1,064,000</u>
Total all funds	\$2,980,443
Less estimated income	<u>806,304</u>
Total general fund appropriation	\$2,174,139

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION. The line item entitled grants, benefits, and claims in section 1 of this Act includes \$1,014,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1988.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 45

SENATE BILL NO. 2009
(Committee on Appropriations)

STATE PENITENTIARY

AN ACT making an appropriation for defraying the expenses of the state penitentiary and various divisions thereof of the state of North Dakota and providing for a transfer from the North Dakota state penitentiary land fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the state penitentiary and roughrider industries under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

STATE PENITENTIARY		
Salaries and wages		\$ 8,272,786
Operating expenses		4,379,621
Equipment	86,164	
Capital improvements	<u>2,132,214</u>	
Total all funds		\$14,870,785
Less estimated income	<u>1,629,856</u>	
Total general fund appropriation		\$13,240,929

Subdivision 2.

ROUGH RIDER INDUSTRIES		
Salaries and wages		\$ 1,266,798
Operating expenses		4,944,390
Equipment	754,000	
Capital improvements	<u>700,000</u>	
Total special fund appropriation		\$ 7,665,188

Grand total general fund appropriation S.B. 2009	\$13,240,929
Grand total special funds appropriation S.B. 2009	\$ 9,295,044
Grand total all funds appropriation S.B. 2009	\$22,535,973

SECTION 2. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. LEGISLATIVE INTENT - AUTHORIZATION. It is the intent of the legislative assembly that if the North Dakota state penitentiary annual rodeo fails to generate sufficient revenue to meet rodeo expenses due to unforeseen circumstances, the state penitentiary is authorized to use funds in its operating expenses line item to meet any such deficit.

SECTION 4. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 5. APPROPRIATION - TRANSFER. The amount appropriated for capital improvements in subdivision 1 of section 1 of this Act includes \$170,000 which is hereby appropriated and shall be transferred by the office of management and budget from the North Dakota state penitentiary land fund for the biennium beginning July 1, 1987, and ending June 30, 1989, as required for disbursement by the director of institutions.

SECTION 6. LEGISLATIVE INTENT - BONDING PAYMENTS. It is the intent of the legislative assembly that the amount appropriated for capital improvements in subdivision 1 of section 1 of this Act includes \$1,809,714 for payment of construction bonds issued in accordance with chapter 571 of the 1985 Session Laws.

SECTION 7. CONTINGENT APPROPRIATION. Subdivision 2 of section 1 of this Act includes \$1,900,000, including \$195,000 in salaries and wages, \$1,160,000 in operating expenses, and \$545,000 in equipment, which is appropriated for the 1987-89 biennium for a license plate manufacturing program only if the one dollar motor vehicle license fee increase for distribution of a license plate issue included in House Bill No. 1018 is approved by the 1987 legislative assembly.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 46

SENATE BILL NO. 2010
 (Committee on Appropriations)

RADIO COMMUNICATIONS DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the radio communications department of the state of North Dakota and providing for a transfer from the state highway fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from federal funds and other income, to the state radio communications department under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,458,797
Operating expenses	1,937,310
Data processing	262,071
Equipment	<u>20,429</u>
Total special fund appropriation	\$3,678,607

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$3,438,607, or so much thereof as is necessary, is hereby appropriated and shall be transferred from the state highway fund to the state radio communications department as directed by the office of management and budget during the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 15, 1987
 Filed April 15, 1987

CHAPTER 47

SENATE BILL NO. 2011
(Committee on Appropriations)

DIVISION OF EMERGENCY MANAGEMENT

AN ACT making an appropriation for defraying the expenses of the division of emergency management of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,103,508
Operating expenses	389,496
Equipment	<u>32,440</u>
Total all funds	\$1,525,444
Less estimated income	<u>1,170,657</u>
Total general fund appropriation	\$ 354,787

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 15, 1987
Filed April 15, 1987

CHAPTER 48

SENATE BILL NO. 2012
(Committee on Appropriations)

PARDON BOARD AND PAROLE AND PROBATION OFFICE

AN ACT making an appropriation for defraying the expenses of the pardon board and the parole and probation office of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the pardon board and the parole and probation office of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

PARDON BOARD

Operating expenses	\$ 1,709
Total general fund appropriation	\$ 1,709

Subdivision 2.

PAROLE AND PROBATION OFFICE

Salaries and wages	\$1,678,788
Operating expenses	218,656
Equipment	<u>10,807</u>
Total general fund appropriation	\$1,908,251
Grand total general fund appropriation S.B. 2012	\$1,909,960

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 49

SENATE BILL NO. 2013
(Committee on Appropriations)

ADJUTANT GENERAL

AN ACT making an appropriation for defraying the expenses of the adjutant general of the state of North Dakota; and to provide for an appropriation and transfer of funds from the national guard tuition trust fund; to amend and reenact section 37-07.1-06.1 of the North Dakota Century Code, relating to the North Dakota national guard tuition trust fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the adjutant general's office for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 952,455
Operating expenses	1,113,489
Equipment	38,300
Grants	600,712
Inauguration	1,750
Recruiting and retention	30,000
Army guard contract	3,500,000
Tuition fees	750,000
Air guard contract	<u>2,525,100</u>
Total all funds	\$9,511,806
Less estimated income	<u>6,435,100</u>
Total general fund appropriation	\$3,076,706

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$750,000, or so much thereof as is necessary, for the line item entitled tuition fees and included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred from the accumulated earnings of the national guard tuition trust fund to the adjutant general for the tuition programs

provided for in North Dakota Century Code chapters 37-07.1 and 37-07.2 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$500,000 or so much thereof as is necessary, for the line item entitled operating expenses and included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred from the principal of the national guard tuition trust fund to the adjutant general for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. AMENDMENT. Section 37-07.1-06.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07.1-06.1. North Dakota national guard tuition fund. There is hereby established a special trust fund in the state treasury to be known as the national guard tuition trust fund. ~~Interest~~ The fund and interest earned on such fund shall be used, within the limits of legislative appropriation, for the tuition programs provided for in chapters 37-07.1 and 37-07.2, work study programs, ~~and~~ other programs to encourage membership in the national guard, and national guard operations. The fund shall not be subject to the provisions of section 54-44.1-11. The moneys in the fund shall be invested by the state investment board and interest earned by the fund shall be credited to the fund. On July 1, 1999, any unobligated balance in the fund shall be transferred to the general fund.

SECTION 7. LEGISLATIVE INTENT - NATIONAL GUARD ARMORIES. It is the intent of the legislative assembly that the adjutant general not vacate any armories prior to July 1, 1987, and that the adjutant general receive the approval of the budget section of the legislative council prior to vacating any armories during the period beginning July 1, 1987, and ending June 30, 1989.

SECTION 8. EMERGENCY - LEGISLATIVE INTENT. Section 7 of this Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 50

SENATE BILL NO. 2014
(Committee on Appropriations)

CIVIL AIR PATROL

AN ACT making an appropriation for defraying the expenses of the civil air patrol of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the civil air patrol of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and Wages	\$ 44,309
Operating expenses	<u>62,280</u>
Total general fund appropriation	\$106,589

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 51

SENATE BILL NO. 2015
(Committee on Appropriations)**HUMAN SERVICES, STATE HOSPITAL, AND
GOVERNOR'S COUNCIL ON HUMAN RESOURCES**

AN ACT making an appropriation for defraying the expenses of the department of human services, state hospital, and the governor's council on human resources; making an appropriation and transfer from the lands and minerals trust fund to the common schools trust fund; making an appropriation of excess revenues generated by human service centers; providing the emergency commission with appropriation transfer authority; to amend and reenact section 50-01-09.2 of the North Dakota Century Code, relating to poor relief expenditures; and to provide legislative intent statements relating to inspection of care and survey functions, DUI evaluation program reductions, human service center operating expenses, and the use of capital improvement appropriations for payment of construction bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

DEPARTMENT OF HUMAN SERVICES

Salaries and wages	\$ 45,442,896
Operating expenses	23,101,331
Data processing	8,586,681
Equipment	508,095
Grants, benefits, and claims	460,976,011
Total all funds	\$538,615,014
Less estimated income	365,695,285
Total general fund appropriation	\$172,919,729

Subdivision 2.

GOVERNOR'S COUNCIL ON HUMAN RESOURCES

Salaries and wages	\$	188,248
Operating expenses		132,786
Grants, benefits, and claims		533,840
Child abuse program		200,000
Total all funds	\$	1,054,874
Less estimated income		851,344
Total general fund appropriation	\$	203,530

Subdivision 3.

STATE HOSPITAL

Salaries and wages	\$	36,345,255
Operating expenses		6,459,375
Data processing		842,529
Equipment		293,085
Capital improvements		1,128,233
Total all funds	\$	45,068,477
Less estimated income		13,432,617
Total general fund appropriation	\$	31,635,860

SECTION 2. APPROPRIATION - TRANSFER. There is hereby appropriated out of any moneys in the lands and minerals trust fund, not otherwise appropriated, the sum of \$1,797,142, or so much thereof as may be necessary, for the purpose of making payments of principal and interest to the common schools trust fund on any loans made from it pursuant to the developmentally disabled facility loan fund program no. 2 and 3 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. APPROPRIATION. There is hereby appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated and from special funds derived from federal funds and other income, the sum of \$6,813,440 including general fund moneys of \$4,070,515 and \$2,742,925 of special funds. These funds shall be available to the Grafton state school, the department of human services, and the state hospital for the purpose of ensuring compliance with the A.R.C. lawsuit. These funds shall be allocated to the Grafton state school, the department of human services, and the state hospital upon approval of the governor for the biennium beginning July 1, 1987, and ending June 30, 1989.

Grand total general fund appropriation S.B. 2015	\$208,829,634
Grand total special funds appropriation S.B. 2015	\$384,519,313
Grand total all funds appropriation S.B. 2015	\$593,348,947

SECTION 4. AMENDMENT. Section 50-01-09.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01-09.2. Reimbursement Allocation to counties by state for general assistance provided poor relief expenditures. Within the limits of legislative appropriations, the department of human services shall reimburse each county upon claim being made by the

county, for one-half of the amounts expended on behalf of persons unable to provide themselves with a reasonable subsistence compatible with decency and health and who are not otherwise provided for under the laws of this state. Claim for reimbursement along with a certification of amounts paid shall be presented quarterly by the board of county commissioners to the department of human services. An amount not to exceed one-half of the sums so certified shall be paid to the county by the department of human services, except that beginning July 1, 1986, the department shall reimburse the county for sixty-five percent, and beginning July 1, 1987, the department shall reimburse the county for eighty percent of the cost of supplementary payments to or on behalf of these individuals residing in adult family care homes and custodial care homes who are in receipt of supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) and who are determined by the department to need assistance to enable them to meet the reasonable costs of custodial care in these homes, upon the audit and approval of the claim in the manner provided by law allocate and distribute to each county social service board a proportionate share of funds appropriated for the purpose of assisting county social service boards in the furnishing of poor relief. The department shall make quarterly allocations and distributions on or before the last day of the first month of each quarter. The department shall allocate to the county social service board of each county the proportion that the county social service board's expenditures for poor relief in the previous quarter is of all county social service boards' expenditures for poor relief in that quarter.

SECTION 5. EMERGENCY COMMISSION - TRANSFERS. The emergency commission, notwithstanding section 54-16-04, shall have the authority during the biennium beginning July 1, 1987, to approve the transfer of appropriations made to the Grafton state school to the department of human services to the extent necessary to match federal medicaid funds in excess of the amounts included in section 1 of this Act for that purpose. The emergency commission shall also have the authority to approve the transfer of previously referred appropriations back to the Grafton state school not considered necessary at a later time by the department of human services for this purpose.

SECTION 6. INTEGRATION OF INSPECTION OF CARE AND SURVEY FUNCTIONS. It is the intent of the legislative assembly that the department of human services and the state department of health continue in their cooperative efforts to integrate the medicaid inspection of care responsibilities and the health facility certification survey functions as they relate to long-term care facilities, including skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the developmentally disabled. Upon approval of the budget section of the legislative council, the department of human services may make expenditures from the appropriations contained in subdivision 1 of section 1 of this Act to the state department of health for purposes of unifying the

certification survey and inspection of care functions during the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 7. LEGISLATIVE INTENT - DUI EVALUATION PROGRAM REDUCTIONS. It is the intent of the legislative assembly that the department of human services eliminate by July 1, 1989, the provision of alcohol and drug evaluations for persons resulting from violations of the state's driving under the influence laws and other criminal violations.

SECTION 8. LEGISLATIVE INTENT - HUMAN SERVICE CENTER OPERATING EXPENSES. The legislative assembly recognizes that funds appropriated in subdivision 1 of section 1 of this Act for defraying operating expenses in human service centers during the biennium beginning July 1, 1987, and ending June 30, 1989, are insufficient to fulfill otherwise ongoing obligations, including certain lease commitments, that are conditioned upon legislative appropriations. It is the intent of the legislative assembly that the department of human services take such actions as may be necessary to curtail or modify otherwise ongoing obligations so as to operate within the appropriations contained in subdivision 1 of section 1 of this Act for purposes of defraying human service center operating expenses.

SECTION 9. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 10. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 11. TRANSFER AUTHORIZATION. Notwithstanding section 54-16-04, the department, subject to the approval of the emergency commission, may make such transfers between line items in section 1 of this Act as may be necessary to effectively and efficiently meet the overall departmental requirements; and the emergency commission is hereby authorized to consider and act upon such requests.

SECTION 12. LEGISLATIVE INTENT - BONDING PAYMENTS. It is the intent of the legislative assembly that the amount appropriated for capital improvements in subdivision 3 of section 1 of this Act includes \$828,233 for payment of construction bonds issued in accordance with chapter 571 of the 1985 Session Laws.

SECTION 13. APPROPRIATION. All collections from nonfederal sources by human service centers in excess of amounts included as revenue in section 1 of this Act are hereby appropriated to the department of human services for the purpose of staff development, training, or other purposes approved by the executive director and can only be expended by authorization of the emergency commission.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 52

SENATE BILL NO. 2016
(Committee on Appropriations)

GRAFTON STATE SCHOOL, COURT MONITOR, AND PROTECTION AND ADVOCACY PROJECT

AN ACT making an appropriation for defraying the expenses of the Grafton state school, protection and advocacy project, and deinstitutionalization court monitor of the state of North Dakota; authorizing the director of institutions to sell, lease, exchange, or transfer title or use of the properties of San Haven; to provide administrative supervision of the protection and advocacy project; to provide legislative intent regarding federally funded positions in the protection and advocacy project; to require emergency commission approval of new positions; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the Grafton state school under the supervision of the director of institutions, the Protection and Advocacy Project and the Court Monitor of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.	GRAFTON STATE SCHOOL	
Salaries and wages		\$45,561,339
Operating expenses		8,660,873
Data processing		12,550
Equipment		325,464
Capital improvements		<u>1,719,172</u>
Total all funds		\$56,279,398
Less estimated income		<u>47,105,143</u>
Total general fund appropriation		\$ 9,174,255

Subdivision 2.

PROTECTION AND ADVOCACY PROJECT	
Salaries and wages	\$ 1,360,923
Operating expenses	411,238
Data processing	500
Grants, benefits, and claims	11,000
Equipment	16,291
Total all funds	\$ 1,799,952
Less estimated income	578,690
Total general fund appropriation	\$ 1,221,262

Subdivision 3.

DEINSTITUTIONALIZATION - COURT MONITOR	
Operating expenses	\$ 192,000
Total general fund appropriation	\$ 192,000
Grand total general fund appropriation S.B. 2016	\$10,587,517
Grand total special funds appropriation S.B. 2016	\$47,683,833
Grand total all funds appropriation S.B. 2016	\$58,271,350

SECTION 2. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. LEGISLATIVE INTENT - BONDING PAYMENTS. It is the intent of the legislative assembly that the amount appropriated for capital improvements in subdivision 1 of section 1 of this Act includes \$949,172 for payment of construction bonds issued in accordance with chapter 571 of the 1985 Session Laws.

SECTION 5. EMERGENCY COMMISSION - TRANSFERS - APPROPRIATION. The emergency commission, notwithstanding North Dakota Century Code section 54-16-04, shall have the authority during the biennium beginning July 1, 1987, to approve the transfer of appropriations made to Grafton state school to the department of human services to the extent necessary to match federal medicaid funds in excess of the amounts included in subdivision 1 of section 1 of this Act for that purpose. The emergency commission shall also have the authority to approve the transfer of appropriations back to the Grafton state school not considered necessary at a later time. All income in excess of estimated income included in subdivision 1 of section 1 of this Act must be deposited in the Grafton State School operating fund and is hereby appropriated and can be expended only by authorization of the emergency commission.

SECTION 6. Director may sell, lease, exchange, or transfer title or use to all or part of the San Haven properties. The director of institutions, with the approval of the governor and the budget section, is authorized to sell, lease, exchange, or transfer title or use of any part or all of the San Haven facilities and properties, located in sections nineteen, twenty-nine, and thirty, township one hundred sixty-two north, range seventy-two west, located in Hill Side Township in Rolette County, North Dakota, to the federal government or any public or private agency, organization, or business enterprise for any native American project or program or any other worthy undertaking, under the following provisions:

1. The transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
2. The transaction must be with the technical assistance and advice of the commissioner of university and school lands.
3. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
4. Any funds realized by any transaction must be deposited in the state's general fund.

SECTION 7. PROTECTION AND ADVOCACY PROJECT - SUPERVISION. The activities of the protection and advocacy project shall be monitored by the office of management and budget, which shall make administrative recommendations to the project which the legislative assembly urges the protection and advocacy project to implement.

SECTION 8. LEGISLATIVE INTENT - PROTECTION AND ADVOCACY PROJECT - FEDERALLY FUNDED POSITIONS. It is the intent of the legislative assembly that if federal funds do not become available for the positions in the protection and advocacy project expected to be funded from that source during the 1987-89 biennium, the positions shall not be funded from the general fund and if other funds are not available, the positions shall be discontinued.

SECTION 9. EMERGENCY COMMISSION APPROVAL - PROTECTION AND ADVOCACY PROJECT. The funding for the five new regional advocates in the amount of \$342,990 contained in subdivision 2 of section 1 of this Act shall be for temporary staff and may be expended only upon the approval of the emergency commission.

SECTION 10. EXPIRATION DATE. Section 6 of this Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 53

SENATE BILL NO. 2017
(Committee on Appropriations)

ATMOSPHERIC RESOURCE BOARD

AN ACT making an appropriation for defraying the expenses of the atmospheric resource board of the state of North Dakota; to provide for changing the name of the North Dakota weather modification board to the North Dakota atmospheric resource board; and to amend and reenact subsection 3 of section 61-04.1-24, sections 61-04.1-26 and 61-04.1-32 of the North Dakota Century Code, relating to mill levies for weather modification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the atmospheric resource board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 299,799
Operating expenses	1,343,433
Equipment	11,872
Data processing	23,000
Research - weather modification	1,050,000
Total all funds	<u>\$2,728,104</u>
Less estimated income	<u>2,194,464</u>
Total general fund appropriation	\$ 533,640

SECTION 2. APPROPRIATION. There is hereby appropriated \$2,000,000, or so much thereof as may be necessary, from additional special funds derived from federal funds and other income during the biennium beginning July 1, 1987, and ending June 30, 1989, to the atmospheric resource board of the state of North Dakota.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby

repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. ATMOSPHERIC RESOURCE BOARD. The North Dakota legislative council is hereby authorized to delete, where appropriate, "weather modification board" wherever it appears in the North Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "atmospheric resource board". Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative assembly that the atmospheric resource board shall be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the weather modification board.

SECTION 5. AMENDMENT. Subsection 3 of section 61-04.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The following paragraph: We, the undersigned qualified electors of the (name of county), state of North Dakota, are notified hereby that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant unto the authority by law the power to certify to the board of county commissioners a mill levy tax not to exceed ~~four~~ seven mills upon the taxable valuation of property in said county for a weather modification fund, which tax may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such fund shall be used for weather modification activities in conjunction with the state of North Dakota. We, the undersigned, understand that the authority requested in this petition expires ten years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided by North Dakota Century Code section 61-04.1-26, for five-year periods in accordance with North Dakota Century Code section 61-04.1-27.

SECTION 6. AMENDMENT. Section 61-04.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-26. Tax may be certified by weather modification authority. The weather modification authority may certify annually to the board of county commissioners a tax of not to exceed ~~four~~ seven mills upon the taxable valuation of the property in the county for a "weather modification" fund. The tax shall be levied by the board of county

commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund shall be used only for weather modification activities in conjunction with the state of North Dakota. The tax certified by the weather modification authority is limited to the period of existence of the weather modification authority as provided for in this chapter.

SECTION 7. AMENDMENT. Section 61-04.1-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-32. County budget may be waived for first appropriation - Conditions. The provisions of chapter 11-23 shall not apply to appropriations made under the provisions of this chapter. However, immediately after a weather modification authority has been created by resolution of the board of county commissioners, and after certification of a mill levy by the weather modification authority, and only for the initial or first appropriation for the authority, the county commissioners may, at their discretion, appropriate from moneys, not otherwise appropriated, in the general fund, such moneys as are necessary for carrying out the provisions of this chapter. However, the appropriation shall not exceed an amount equal to what funds would be raised by a ~~four-mill~~ seven-mill levy upon the taxable valuation of the property in the county.

Approved April 15, 1987
Filed April 15, 1987

CHAPTER 54

SENATE BILL NO. 2018
 (Committee on Appropriations)

MISCELLANEOUS REFUNDS AND COMMISSIONS

AN ACT making an appropriation for defraying expenses of various commissions, departments, and divisions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from income to the various stated commissions, departments, and divisions of the state of North Dakota for the purpose of defraying the expenses for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

EMERGENCY COMMISSION

State contingencies	\$ 700,000
Total general fund appropriation	<u>\$ 700,000</u>

Subdivision 2.

UNEMPLOYMENT INSURANCE

Grants, benefits, and claims	\$2,000,000
Total special funds appropriation	<u>\$2,000,000</u>

Subdivision 3.

CAPITOL GROUNDS PLANNING COMMISSION

Operating expenses	\$ 73,000
Total capitol building fund appropriation	<u>\$ 73,000</u>

Subdivision 4.

YELLOWSTONE - MISSOURI - FORT UNION COMMISSION

Operating expenses	\$ 9,500
Total general fund appropriation	<u>\$ 9,500</u>

Subdivision 5.

STATE FIREMEN'S ASSOCIATION

Grants, benefits, and claims	\$ 49,500
Total appropriation from the state fire and tornado fund	<u>\$ 49,500</u>

Subdivision 6.

MISCELLANEOUS REFUNDS

Grants, benefits, and claims	\$ 195,250
Total general fund appropriation	<u>\$ 195,250</u>
Grand total general fund appropriation S.B. 2018	\$ 904,750
Grand total special funds appropriation S.B. 2018	\$2,122,500
Grand total all funds appropriation S.B. 2018	<u>\$3,027,250</u>

SECTION 2. EXEMPTION. The funds herein appropriated for subdivisions 3 and 4 of this Act shall not be subject to the provisions of sections 54-27-10 and 54-27-11 of the North Dakota Century Code, relating to the time during which appropriations become available.

SECTION 3. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 4. DISASTER EXPENSES. The funds appropriated in subdivision 1 of section 1 of this Act shall also be available to defray the costs of state agencies and institutions which arise as a result of natural disasters and to match federal disaster relief funds.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 55

SENATE BILL NO. 2019
(Committee on Appropriations)

INSURANCE PREMIUM TAX DISTRIBUTION

AN ACT making an appropriation for insurance premium tax payments distribution to fire departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the state fire and tornado fund in the state treasury, not otherwise appropriated, the sum of \$5,200,000, or so much thereof as may be necessary, to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments, for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 56

SENATE BILL NO. 2020
(Committee on Appropriations)

HOMESTEAD TAX CREDIT

AN ACT making an appropriation for the homestead tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state tax commissioner for the purpose of reimbursing the homestead tax credit, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Grants, benefits, and claims	<u>\$4,250,000</u>
Total general fund appropriation	<u>\$4,250,000</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holdings shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 57

SENATE BILL NO. 2023
(Committee on Appropriations)

CENTENNIAL COMMISSION

AN ACT making an appropriation for defraying the expenses of the centennial commission of the state of North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$292,500, or so much thereof as may be necessary, to the centennial commission for the period beginning with the effective date of this Act and ending June 30, 1989.

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 9, 1987
Filed April 9, 1987

CHAPTER 58

SENATE BILL NO. 2024
(Committee on Appropriations)

INSURANCE COMMISSIONER

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the commissioner of insurance of the state of North Dakota; to create and enact three new sections to chapter 26.1-01 and a new subsection to section 26.1-01-07 of the North Dakota Century Code, relating to the establishment of an insurance regulatory trust fund; to amend and reenact subsections 2 and 11 of section 26.1-01-07 and section 26.1-03-20 of the North Dakota Century Code, relating to fees charged by the commissioner of insurance; and to provide for transfers from the unsatisfied judgment and state bonding funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in special funds in the state treasury, not otherwise appropriated, derived from federal funds and other income, to the various divisions under the supervision of the commissioner of insurance of the state of North Dakota, for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.		
	INSURANCE COMMISSIONER	
Salaries and wages		\$1,459,053
Operating expenses		387,884
Data processing		3,673
Equipment		13,138
Total appropriation from the insurance regulatory trust fund		<u>\$1,863,748</u>
Subdivision 2.		
	BONDING FUND	
Salaries and wages		\$ 32,832
Operating expenses		9,634
Data processing		1,792

Equipment	7,000
Total appropriation from state bonding fund	\$ 51,258

Subdivision 3.

FIRE AND TORNADO FUND

Salaries and wages	\$ 184,849
Operating expenses	52,623
Data processing	9,500
Equipment	17,786
Total appropriation from state fire and tornado fund	\$ 264,758

Grand total special funds appropriation S.B. 2024 \$2,279,764

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 3. APPROPRIATION. The moneys herein appropriated for salaries and wages for new positions shall be made available only after certification to the executive office of the budget that the additional employees allowed are actually in the employ of the state.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$750,000, or so much thereof as is necessary, included in the total amount appropriated in subdivision 1 of section 1 of this Act, is hereby appropriated and shall be transferred from the state bonding fund to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$52,455, or so much thereof as is necessary, included in the total amount appropriated in subdivision 1 of section 1 of this Act, is hereby appropriated and shall be transferred from the unsatisfied judgment fund to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. A new section to chapter 26.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurance regulatory trust fund established.

1. There is hereby created a trust fund designated "insurance regulatory trust fund". The following amounts must be deposited in the insurance regulatory trust fund:

- a. All sums received under section 26.1-01-07.
 - b. All sums received under section 7 of this Act from the insurance regulatory trust fund investments.
 - c. All retaliatory fees imposed upon persons by the insurance department as authorized by law.
 - d. Any other amounts provided by legislative appropriation.
2. The moneys so received and deposited in the insurance regulatory trust fund are reserved for use by the department of insurance to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law subject to the applicable laws relating to the appropriations of state funds and to the deposit and expenditure of state moneys. The department of insurance is responsible for the proper expenditure of these moneys as provided by law.
 3. Any cash balance in the insurance regulatory trust fund after all current biennium expenditures are met must be carried forward in the insurance regulatory trust fund for the next succeeding biennium, except when the balance at the end of the biennium exceeds two million dollars, any excess will be transferred to the general fund in the state treasury.

SECTION 7. A new section to chapter 26.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurance regulatory trust fund investment.

1. It is the responsibility of the department of insurance, charged with the administration of the insurance regulatory trust fund, to make such moneys available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such moneys by the state investment board.
2. The department of insurance shall monthly notify the state investment board of the amount available for investment, and the moneys must be invested by the investing authority according to the laws relating to state investments. Such notification must include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting obligations.
3. All earnings derived from such investments must be paid into the insurance regulatory trust fund.

SECTION 8. A new section to chapter 26.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cash flow financing. In order to effectively meet the cyclical cash flow needs of the insurance regulatory trust fund, the office of management and budget upon approval of the emergency commission is hereby authorized to issue certificates in anticipation of revenue, notes, or bonds, to funds on deposit in the state treasury. Any issue of such certificates, notes, or bonds, must be approved by the emergency commission and are to be used for cash flow financing only, and not to offset projected deficits in the insurance regulatory trust fund. The terms of any specific issue of such certificates, notes, or bonds may not exceed one hundred eighty days from the date of issuance whereupon the principal and interest on the certificates, notes, or bonds must be paid in full from the insurance regulatory trust fund or from another issue of a similar nature. All principal and interest on such issues made during a biennial period must be repaid in full at the close of the biennial period from the insurance regulatory trust fund. When certificates, notes, or bonds are issued for cash flow purposes to funds which otherwise would be invested, with the investment income accruing to the fund, the certificate shall bear an investment rate of return which must be agreed upon by the state investment board, and must be at a level commensurate with the yield to be reasonably expected by such fund if invested in alternate securities.

SECTION 9. A new subsection to section 26.1-01-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.

SECTION 10. AMENDMENT. Subsections 2 and 11 of section 26.1-01-07 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. For each original certificate of authority issued upon admittance, twenty-five ~~fifty one hundred~~ dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, twenty-five ~~fifty~~ dollars.
11. For an official examination, the actual expense and per diem incurred, but the per diem charge may not exceed thirty-five dollars the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including but not limited to actual travel expenses, including hotel and other living expenses,

compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.

SECTION 11. AMENDMENT. Section 26.1-03-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-20. Examinations - By whom conducted - Compensation to be paid into state treasury. Qualified regular employees of the commissioner shall conduct all examinations of an insurance company required or permitted by law to be conducted by the commissioner, whether or not the examinations are convention examinations called in accordance with rules promulgated by the national association of insurance commissioners. Their compensation is to be paid out of the appropriation for the commissioner's office. Any sums paid to the employees or to the commissioner by the company examined, as an examination fee or otherwise, is state money, and forthwith shall be paid into the state treasury insurance regulatory trust fund. Any sums paid to the employee or the commissioner as expense money for the examiner may be paid directly to the employee, and no employee may charge or collect from the state any expenses incurred in connection with any examination for or during which expenses or any part thereof have been paid by any other person, firm, or corporation.

SECTION 12. APPROPRIATION. There is hereby appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$100,000 or so much thereof as may be necessary to pay interest costs on any moneys borrowed under the provisions of section 8 of this Act. This appropriation authority shall expire on June 30, 1989.

Approved April 13, 1987
Filed April 14, 1987

CHAPTER 59

SENATE BILL NO. 2025
(Committee on Appropriations)

AGRICULTURAL COUNCILS AND COMMISSIONS

AN ACT making an appropriation for defraying the expenses of various agricultural councils and commissions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the various agricultural councils and commissions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

EDIBLE BEAN COUNCIL

Operating expenses	\$ 400,000
Total appropriation from edible bean fund	\$ 400,000

Subdivision 2.

SUNFLOWER COUNCIL

Salaries and wages	\$ 37,445
Operating expenses	705,555
Equipment	7,000
Total appropriation from sunflower fund	\$ 750,000

Subdivision 3.

HONEY PROMOTION FUND

Operating expenses	\$ 36,000
Total appropriation from honey promotion fund	\$ 36,000

Subdivision 4.

STATE POTATO COUNCIL

Operating expenses	\$ 850,000
Total appropriation from spud fund	\$ 850,000

Subdivision 5.

TURKEY FUND

Operating expenses	\$ 34,000
Total appropriation from turkey promotion fund	\$ 34,000

Subdivision 6.

STATE WHEAT COMMISSION

Salaries and wages	\$ 542,023
Operating expenses	2,402,204
Data processing	6,000
Equipment	20,000
Total appropriation from wheat promotion fund	\$2,970,227

Subdivision 7.

AGRICULTURAL PRODUCTS UTILIZATION COMMISSION

Salaries and wages	\$ 116,058
Operating expenses	65,805
Grants, benefits, and claims	326,930
Total appropriation from agriculturally derived fuel tax fund	\$ 508,793
Grand total special funds appropriation S.B. 2025	\$5,549,020

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purpose provided for herein.

SECTION 3. APPROPRIATION. There is hereby appropriated in addition to the appropriations provided in section 1 of this Act, all funds as may be on deposit in the various special funds for which appropriations are made in section 1 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. CONTINUING APPROPRIATION - HONEY PROMOTION FUND. The moneys received by the honey promotion fund from sales of the honey cookbooks are hereby appropriated for cookbook publication expenses for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 4, 1987
 Filed April 6, 1987

CHAPTER 60

SENATE BILL NO. 2026 (Committee on Appropriations)

STATE SEED DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state seed department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the state seed department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,986,673
Operating expenses	626,271
Equipment	18,859
Capital improvements	5,070
Grants	60,000
Contingency	85,798
Total appropriation from seed department fund	<u>\$2,782,671</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 61

SENATE BILL NO. 2027
(Committee on Appropriations)

GAME AND FISH DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the game and fish department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the game and fish department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$ 6,743,017
Operating expenses	4,174,654
Data processing	294,150
Equipment	631,062
Capital improvements	2,231,012
Grants, benefits, and claims	1,598,300
Deer depredation	1,000,000
Noxious weed control	144,595
Wildlife habitat	600,000
In lieu of taxes	350,000
Total special funds appropriation	<u>\$17,826,790</u>

The sum of \$60,000, or so much thereof as may be necessary, from gifts and donations from private sources received by the game and fish department is hereby appropriated for the purpose designated in the gift, grant, or donation.

SECTION 2. HABITAT RESTORATION - TRANSFER. The amount of \$600,000, or such lesser amount as may be available, for the line item entitled wildlife habitat in section 1 of this Act shall be transferred from the habitat restoration fund from the collection of the habitat restoration stamp fee, to the game and fish department to lease privately owned lands for wildlife habitat to reestablish

wildlife population for the biennium beginning July 1, 1987, and ending June 30, 1989. These funds shall be spent only for the purposes and utilizing guidelines as outlined in section 20.1-03-12.1.

SECTION 3. PRIVATE HABITAT AND DEER DEPREDATION - TRANSFER.

The amount of \$1,000,000, or such lesser amount as may be available, for the line item entitled deer depredation in section 1 of this Act, shall be transferred from the private land habitat improvement fund, to the game and fish department, to improve wildlife habitat on private land and alleviate depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. APPROPRIATION - NONGAME WILDLIFE. There is hereby appropriated out of any moneys in the nongame wildlife fund in the state treasury, not otherwise appropriated, the sum of \$25,000, and from federal funds the sum of \$25,000, or so much thereof as may be necessary, to the game and fish department for the biennium beginning July 1, 1987, and ending June 30, 1989, for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state.

SECTION 5. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 6. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 62

SENATE BILL NO. 2028
(Committee on Appropriations)

PARKS AND RECREATION DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the parks and recreation department of the state of North Dakota and providing for a transfer from the snowmobile fund and the trail tax transfer fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$2,848,903
Operating expenses	1,692,550
Data processing	200
Equipment	293,682
Capital improvements	502,281
State games	75,000
Grants, benefits, and claims	<u>1,880,641</u>
Total all funds	<u>\$7,293,257</u>
Less estimated income	<u>3,085,524</u>
Total general fund transfer and appropriation	\$4,207,733

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. CAPITAL IMPROVEMENTS AND GRANTS, BENEFITS, AND CLAIMS. It is intended that the appropriation for capital

improvements be expended at the discretion of the parks and recreation department and that the appropriation for grants, benefits, and claims be expended at the discretion of the parks and recreation department and the state outdoor recreation interagency council.

SECTION 4. APPROPRIATIONS. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$100,000, or so much thereof as is necessary, included in the estimated income line item, is hereby appropriated and shall be transferred by the office of management and budget from the snowmobile fund to the parks and recreation department for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. APPROPRIATION - TRANSFER. The amount of \$45,000, or so much thereof as is necessary, included in the estimated income line item, is hereby appropriated and shall be transferred by the office of management and budget from the trail tax transfer fund to the parks and recreation department for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 13, 1987
Filed April 14, 1987

CHAPTER 63

SENATE BILL NO. 2029
(Committee on Appropriations)

STATE WATER COMMISSION

AN ACT making an appropriation for defraying the expenses of the various divisions of the state water commission of the state of North Dakota; and providing for an appropriation and transfer of funds from the resources trust fund, bond guarantee fund, the water use fund, and the lands and minerals trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions of the state water commission of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.	STATE WATER COMMISSION	
Salaries and wages		\$ 4,449,187
Operating expenses		1,067,686
Data processing		103,100
Equipment		124,480
Grants		6,989,993
Total all funds		<u>\$12,734,446</u>
Less estimated income		<u>7,102,601</u>
Total general fund appropriation		\$ 5,631,845

Subdivision 2.	SOUTHWEST WATER PIPELINE	
Salaries and wages		\$ 277,372
Operating expenses		1,809,562
Equipment		20,500
Capital improvements		23,748,000
Total special funds appropriation		<u>\$25,855,434</u>

Grand total general fund appropriation S.B. 2029	\$ 5,631,845
Grand total special funds appropriation S.B. 2029	\$35,753,870
Grand total all funds appropriation S.B. 2029	\$41,385,715

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$6,704,165, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the resources trust fund to the state water commission for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$95,000, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the state water use fund to the state water commission for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$7,000, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the state water commission construction bond guarantee fund to the state water commission for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$1,860,057, or so much thereof as is necessary, included in the estimated income line item in subdivision 2 of section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the land and minerals trust fund to the southwest water pipeline under the supervision of the state water commission for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. GRANTS. Section 54-44.1-11 of the North Dakota Century Code shall not apply to appropriations made for grants in this Act. However, this exclusion shall only be in effect for the two-year period after June 30, 1989. Any unexpended funds after that period has elapsed shall be transferred to the resources trust fund.

SECTION 7. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. In the event the resources trust fund contains moneys in excess of the \$6,704,165 in section 2 of this Act, any excess, up to \$2,795,835, or so much thereof as is necessary, is hereby appropriated and shall be transferred by the office of management and budget from the resources trust fund to the state water commission for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 8. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in subdivision 1 of section 1 shall be disbursed by the commission in accordance with North Dakota Century Code section 61-02-64.1.

SECTION 9. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 64

SENATE BILL NO. 2030 (Committee on Appropriations)

ECONOMIC DEVELOPMENT COMMISSION

AN ACT making an appropriation for defraying the expenses of the economic development commission of the state of North Dakota; and providing for a transfer from the state highway fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the economic development commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Salaries and wages	\$1,795,684
Operating expenses	2,753,110
Equipment	60,293
Grants	492,000
San Haven redevelopment	52,062
Data processing	17,780
Total all funds	<u>\$5,170,929</u>
Less estimated income	<u>2,738,437</u>
Total general fund appropriation	<u>\$2,432,492</u>

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. TRANSFER. The amount of \$1,801,628 included in the estimated income line item in section 1 of this Act shall be transferred from the state highway fund to the economic development commission operating fund as directed by the office of management and budget during the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 4. APPROPRIATION. The moneys herein appropriated in accordance with budget categories for salaries and wages pertaining to additional employees shall be made available only after certification to the executive office of the budget that newly anticipated employees are actually in the employ of the state.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 65

SENATE BILL NO. 2031
(Committee on Appropriations)

EDUCATIONAL BROADCASTING COUNCIL

AN ACT making an appropriation for defraying the expenses of the educational broadcasting council of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the educational broadcasting council of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Operating expenses	\$ 5,000
Grants	<u>215,000</u>
Total general fund appropriation	\$220,000

SECTION 2. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 3. DISTRIBUTION. The distribution of the grants line item appropriated under section 1 of this Act, during the year ending June 30, 1988, shall not exceed one-half of the total grants line item appropriation provided for in this Act.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 66

SENATE BILL NO. 2121
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

INDUSTRIAL SCHOOL SHOP FUND

AN ACT to create a vocational shop revolving fund at the state industrial school; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. State industrial school vocational shop revolving fund. There must be maintained in the Bank of North Dakota by the state industrial school a vocational shop revolving fund to purchase required parts and supplies for student vocational training projects. The amounts taken from the fund must be paid back to the fund from collections made on these projects. The provisions of section 54-27-10 do not apply to this fund and no part of the fund reverts at the expiration of any biennium.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,500, or so much thereof as may be necessary, to the state industrial school for the purpose of establishment of a vocational shop revolving fund as provided in this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 67

SENATE BILL NO. 2283
 (Senators Waldera, Satrom, Thane)
 (Representatives Kelly, Wentz, Haugland)

CONSTITUTIONAL CELEBRATION COMMITTEE

AN ACT making an appropriation to pay for the expenses of the constitutional celebration committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, from special funds derived from federal funds or other income, to the North Dakota supreme court for the purpose of defraying the expenses of the constitutional celebration committee for the celebration of the bicentennial of the United States Constitution and the centennial of the North Dakota Constitution for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Operating expenses	\$ 70,000
Equipment	5,000
Grants, benefits, and claims	25,000
Total all funds	<u>\$ 100,000</u>
Less estimated income	<u>50,000</u>
Total general fund appropriation	<u>\$ 50,000</u>

Approved March 20, 1987
 Filed March 23, 1987

CHAPTER 68

SENATE BILL NO. 2296 (Heigaard)

APPROPRIATION AUTHORITY REDUCTIONS

AN ACT to provide for certain reductions in general fund appropriation authority; to provide for a reduction in insurance tax to fire districts appropriation authority; to provide for a transfer of fire and tornado funds; to provide for a transfer of coal development impact funds; to provide for a contingent appropriation to the department of human services; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. IMPLEMENTATION - INTENT. The appropriation authority reductions and transfers contained herein are to be in addition to those contained in Senate Bill No. 2904, as approved by the fiftieth legislative assembly, and in addition to the adjustments in appropriation authority made by the governor through the allotment process.

SECTION 2. The sums hereinafter listed shall reduce the general fund appropriation authority enacted by the forty-ninth legislative assembly of the state of North Dakota after consideration of the adjustments described in section 1 of this Act for the various agencies and institutions named herein for the period beginning January 1, 1987, and ending June 30, 1987:

AGENCY OR INSTITUTION	GENERAL FUND REDUCTION
Personal property tax replacement	\$ 325,000
State revenue sharing	325,000
Legislative council	146,000
Legislative assembly	204,000
District courts	200,000
Department of public instruction	1,250,000
Educational broadcasting council	2,000
Indian affairs commission	5,000
Department of human services	1,000,000
Protection and advocacy	25,000
Securities commission	40,250

Crime victims reparation	50,000
Parole office	5,000
Highway patrol	150,000
Radio communications	5,000
Predatory animal control	25,000
Historical society	30,000
Total general fund reductions	\$4,537,250

The director of each agency or institution listed herein shall inform the director of the office of management and budget as to the resulting line item reduction for accounting purposes.

SECTION 3. The appropriation authority enacted by the forty-ninth legislative assembly of the state of North Dakota from the fire and tornado fund, after consideration of the adjustments described in section 1, is hereby reduced by the sum of \$250,000 to the insurance tax to fire districts budget for the period beginning January 1, 1987, and ending June 30, 1987.

SECTION 4. APPROPRIATION - TRANSFER TO GENERAL FUND. There is hereby appropriated \$250,000 from the fire and tornado fund to the general fund in the state treasury for the period beginning January 1, 1987, and ending June 30, 1987. The office of management and budget shall make such transfers when it determines it is appropriate.

SECTION 5. APPROPRIATION - TRANSFER TO GENERAL FUND. There is hereby appropriated \$250,000 from the coal development impact fund to the general fund in the state treasury for the period beginning January 1, 1987, and ending June 30, 1987. The office of management and budget shall make such transfers when it determines it is appropriate.

SECTION 6. APPROPRIATION REDUCTION - INSTITUTIONS UNDER THE CONTROL OF THE BOARD OF HIGHER EDUCATION. The state board of higher education shall reduce the appropriations of the board of higher education and institutions under the board's control, including the agricultural experiment stations and extension division, by \$750,000 for the period beginning January 1, 1987, and ending June 30, 1987.

SECTION 7. CONTINGENT APPROPRIATION - RECEIPT OF OTHER REVENUE - DEPARTMENT OF HUMAN SERVICES. There is hereby appropriated to the department of human services \$2,000,000, or so much as may become available from additional child support collected, for the period beginning January 1, 1987, and ending June 30, 1987.

SECTION 8. EFFECTIVE DATE. This Act is retroactively effective on January 1, 1987.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved February 10, 1987
 Filed February 10, 1987

CHAPTER 69

SENATE BILL NO. 2354
(Senators Olson, Reiten)
(Representatives Koland, Kloubec, Strinden)

FEDERAL ADVANCE INTEREST REPAYMENT FUND

AN ACT to require job service North Dakota to conditionally direct the state treasurer to transfer moneys from the federal advance interest repayment fund to the general fund; or, in the alternative, if Senate Bill No. 2127 is approved by the fiftieth legislative assembly, to require job service North Dakota to unconditionally direct the state treasurer to transfer moneys from the federal advance interest repayment fund to the general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. CONDITIONAL TRANSFER TO GENERAL FUND. If Senate Bill No. 2127 is not approved by the fiftieth legislative assembly, then job service North Dakota shall direct the state treasurer to transfer from the federal advance interest repayment fund to the general fund in the state treasury the sum of \$136,249.90, or so much thereof as may be available during the biennium beginning July 1, 1987, and ending June 30, 1989, after sufficient collections have accrued to the federal advance interest repayment fund for payment of all known interest charges on federal advances to the state unemployment trust fund. The purpose of the transfer is to restore to the general fund those moneys transferred during the biennium beginning July 1, 1985, and ending June 30, 1987, from the state contingency fund to the federal advance interest repayment fund for payment of interest charges on federal advances to the state unemployment trust fund.

SECTION 2. UNCONDITIONAL TRANSFER TO GENERAL FUND. If Senate Bill No. 2127 is approved by the fiftieth legislative assembly, then job service North Dakota shall direct the state treasurer during the biennium beginning July 1, 1987, and ending June 30, 1989, to transfer from the federal advance interest repayment fund to the general fund in the state treasury the sum of \$136,249.90, for the purpose of restoring to the general fund those moneys transferred during the biennium beginning July 1, 1985, and ending June 30, 1987, from the state contingency fund to the federal advance interest repayment fund for payment of interest charges on federal advances to the state unemployment trust fund.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 70

SENATE BILL NO. 2523
(Committee on Appropriations)
(Tallackson)

ELECTED OFFICIALS

AN ACT making an appropriation for defraying the expenses of various elected officials of the state of North Dakota; to provide for transfers; to create and enact a new section to chapter 18-01 of the North Dakota Century Code, relating to fire safety inspections performed by the fire marshal at the request of the department of human services; and to amend and reenact sections 49-05-05, 49-18-32, 49-18-41.1, 60-02-07, and 64-02-10 of the North Dakota Century Code, and section 51-05.1-01.1 of the North Dakota Century Code as created by section 3 of House Bill No. 1223, as approved by the fiftieth legislative assembly, relating to fees charged by the public service commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income the sums as hereinafter provided to the various elected officials for the purpose of defraying the expenses of the various elected officials of the state of North Dakota, for the biennium beginning July 1, 1987, and ending June 30, 1989, as follows:

Subdivision 1.

	GOVERNOR'S OFFICE	
Salaries and wages		\$ 950,749
Operating expenses		310,253
Equipment		2,400
Governor's office contingency		5,720
Presidential electors expense		800
Roughrider awards		4,800
Total general fund appropriation		<u>\$ 1,274,722</u>

Subdivision 2.

LIEUTENANT GOVERNOR

Salaries and wages	\$ 161,653
Operating expenses	11,878
Equipment	1,000
Lieutenant governor contingency	6,893
Total general fund appropriation	<u>\$ 181,424</u>

Subdivision 3.

SECRETARY OF STATE

Salaries and wages	\$ 1,128,825
Operating expenses	317,133
Equipment	34,311
Data processing	379,114
Petition review	4,800
Total all funds	<u>\$ 1,864,183</u>
Less estimated income	717,308
Total general fund appropriation	<u>\$ 1,146,875</u>

Subdivision 4.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 287,403
Total general fund appropriation	<u>\$ 287,403</u>

Subdivision 5.

ATTORNEY GENERAL

Salaries and wages	\$ 7,109,959
Operating expenses	1,508,109
Data processing	324,529
Controlled substances board	4,000
Equipment	127,506
Arrest and return of fugitives	14,560
Grants	830,120
ARC legal fees	45,000
Litigation fees	100,000
Total all funds	<u>\$10,063,783</u>
Less estimated income	3,531,342
Total general fund appropriation	<u>\$ 6,532,441</u>

Subdivision 6.

STATE AUDITOR

Salaries and wages	\$ 3,150,141
Operating expenses	416,505
Data processing	27,000
Equipment	29,000
Total all funds	<u>\$ 3,622,646</u>
Less estimated income	361,016
Total general fund appropriation	<u>\$ 3,261,630</u>

Subdivision 7.

STATE TREASURER

Salaries and wages	\$ 499,525
Operating expenses	67,393
Data processing	24,983
Equipment	2,825
Total general fund appropriation	<u>\$ 594,726</u>

Subdivision 8.

	STATE TAX COMMISSIONER	
Salaries and wages		\$ 8,328,723
Operating expenses		1,901,395
Data processing		1,223,977
Equipment		<u>44,095</u>
Total general fund appropriation		<u>\$11,498,190</u>

Subdivision 9.

	LABOR COMMISSIONER	
Salaries and wages		\$ 463,929
Operating expenses		82,425
Equipment		<u>3,665</u>
Total all funds		\$ 550,019
Less estimated income		<u>85,250</u>
Total general fund appropriation		\$ 464,769

Subdivision 10.

	PUBLIC SERVICE COMMISSION	
Salaries and wages		\$ 3,917,249
Operating expenses		3,973,391
Data processing		405,960
Gas price intervention		50,000
Equipment		<u>143,530</u>
Total all funds		\$ 8,490,130
Less estimated income		<u>4,503,775</u>
Total general fund appropriation		\$ 3,986,355

Subdivision 11.

	AGRICULTURE COMMISSIONER	
Salaries and wages		\$ 1,791,368
Operating expenses		1,323,543
Equipment		15,000
Grants		50,000
Data processing		51,820
Agriculture in the classroom		25,000
Waterbank program		10,000
Pride of Dakota		70,000
Farm credit counseling		<u>1,100,000</u>
Total all funds		\$ 4,436,731
Less estimated income		<u>1,461,958</u>
Total general fund appropriation		\$ 2,974,773
Grand total general fund appropriation S.B. 2523		\$32,253,308
Grand total special funds appropriation S.B. 2523		\$11,471,649
Grand total all funds S.B. 2523		\$43,724,957

SECTION 2. APPROPRIATION. The moneys herein appropriated for salaries and wages for new positions shall be made available only after certification to the executive office of the budget that the additional employees allowed are actually in the employ of the state.

SECTION 3. APPROPRIATION. There is hereby appropriated, upon the approval of the emergency commission, from special funds derived from federal funds and other income, the sum of \$200,000 or so much thereof as may become available during the biennium beginning July 1, 1987, and ending June 30, 1989, to the public service commission of the state of North Dakota, for the purpose of increasing the level of the abandoned mine lands program, and for the purpose of increasing the hydrology monitoring and water sampling and analysis pass-through funds to the United States geological survey.

SECTION 4. APPROPRIATION - AGRICULTURE COMMISSIONER. There is hereby appropriated, upon the approval of the emergency commission, from special funds derived from federal funds and other income, the sum of \$200,000 or so much thereof as may become available during the biennium beginning July 1, 1987, and ending June 30, 1989, to the commissioner of agriculture for the state waterbank program.

SECTION 5. INTENT, REPEAL, PURPOSE, AND CONSTRUCTION. All Acts and parts of Acts that may be in conflict herewith are hereby repealed and if for any reason any specific appropriation for any item should be held by the courts to be unconstitutional or illegal or otherwise unavailable for any cause, such holding shall not affect or be construed to apply to the remaining items of appropriation herein or purposes provided for herein.

SECTION 6. EXEMPTION. The funds herein appropriated for subdivisions 2 and 4 of section 1 of this Act shall not be subject to the provisions of sections 54-27-10 and 54-27-11 of the North Dakota Century Code, relating to the time during which appropriations become available.

SECTION 7. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office is hereby authorized to receive and expend any federal or private funds which are hereby appropriated that become available during the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 8. APPROPRIATION - TRANSFER - ATTORNEY GENERAL. There is hereby authorized, as included in the appropriation for the attorney general in subdivision 5 of section 1 of this Act, a transfer of \$475,742, or so much thereof as may be necessary, from the state fire and tornado fund for the purpose of defraying the expenses related to the state fire marshal program including the hazardous material control officer. Such funds shall be transferred by the office of management and budget only at such times as the moneys are required for disbursement by the attorney general.

SECTION 9. INCOME AUTHORIZATION - TAX COMMISSIONER. Notwithstanding section 57-01-02.1 or any other provision to the contrary, income of up to \$400,000 received from administrative fees generated through tax collection agreements with counties or other political subdivisions initiating taxes during the biennium ending

June 30, 1989, will be deposited in the tax commissioner's operating fund. All fees collected over \$400,000 will be deposited in the general fund. Funds under this section are hereby appropriated for purposes of this section.

SECTION 10. TRANSFER. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel taxes revenue, collected pursuant to section 57-43.1-02 of the North Dakota Century Code, the sum of \$835,300 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of the respective tax acts.

SECTION 11. TRANSFER. The amount of \$1,100,000, or so much thereof as may be necessary, included in the estimated income line item in subdivision 11 of this Act, is hereby appropriated and shall be transferred to the department of agriculture from the home-quarter fund in quarterly installments of \$100,000, or so much thereof as is determined by the commissioner of agriculture to be necessary for the purpose of providing farm credit counseling and negotiation services for the biennium beginning July 1, 1987, and ending June 30, 1989. Transfers in excess of \$100,000 per quarter, not to exceed the total of \$1,100,000, may be authorized by the credit review board.

SECTION 12. A new section to chapter 18-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspections - Department of human services. The fire marshal and the fire marshal's deputies may perform fire safety inspections of those facilities required to be inspected under administrative rules of the department of human services. The fire marshal shall charge a fee not to exceed fifty dollars for conducting these fire safety inspections in an amount determined by administrative rules adopted by the fire marshal. Inspection fees received by the fire marshal must be deposited into the attorney general's operating fund.

SECTION 13. AMENDMENT. Section 49-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-05-05. Changes in tariff rates - Notice to commission - Filing fee. No change shall be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. ~~Such~~ The notice shall state plainly the changes proposed and except for services must be accompanied by a fifty dollar filing fee. The commission for a good cause shown, may allow changes upon less than the notice herein specified, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

SECTION 14. AMENDMENT. Section 49-18-32 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-32. Fees - Common or contract motor carrier. Every common motor carrier and every contract carrier of property or passengers now operating, or which hereafter shall operate, as such common or contract carrier in this state, at the time of making application for a certificate of public convenience and necessity or permit, and annually thereafter, on or before April fifteenth of each calendar year, shall pay a fee of not less than ~~fifteen~~ eighty-five dollars nor more than ~~one~~ two hundred fifty dollars, to be fixed by the commission in each instance. Miscellaneous nonrefundable fees shall be as follows:

- 1. Application for transfer of certificate of public convenience and necessity \$50-~~00~~ 100.00
- 2. Application for the mortgaging of a certificate of public convenience and necessity 10.00
- 3. Application for the issuance of a duplicate certificate of public convenience and necessity 5.00
- 4. Copy of all records of the commission pertaining to auto transportation companies, per one hundred words or portion thereof50

SECTION 15. AMENDMENT. Section 49-18-41.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41.1. Interstate carrier registration and identification. The public service commission is authorized to collect such fees a seven dollar per vehicle fee as it may establish provided by rule for the registration and identification of interstate motor carriers operating within this state. ~~Such fees~~ The fee shall not exceed the maximums provided for by the laws of the United States ~~and shall be credited to the general fund pursuant to section 49-18-42.~~

SECTION 16. AMENDMENT. Section 51-05.1-01.1 of the North Dakota Century Code as created by Section 3 of House Bill No. 1223, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds. Application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms

designated by the commission. The fee for the annual license or renewal is ~~twenty-five~~ thirty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk.

When filing an application an auctioneer or clerk must file a corporate surety bond of three thousand dollars for an auctioneer and ten thousand dollars for a clerk with the state of North Dakota as obligee for the benefit of any person injured by the licensee's improper conduct.

SECTION 17. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-07. Public warehouse license - How obtained - Fee. A license must be obtained through the commission for each public warehouse in operation in this state. No license so issued shall describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described therein. The annual license fee for a public warehouse shall be one hundred thirty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, two hundred sixty dollars for a warehouse of a bushel capacity of two hundred thousand and one to and including five hundred thousand [7047.83 to and including 17,619.54 cubic meters], and ~~two three~~ two three hundred ~~fifty forty~~ fifty dollars for a warehouse of a bushel capacity of five hundred thousand and one [17,619.57 cubic meters] or more. The fees collected under this section shall be paid into the state treasury and credited to the general fund of the state. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such warehouses, and scale tickets, warehouse receipts, checks, and credit-sale contracts of but one series are issued for the grain stored and purchased therein, only one license shall be required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee shall be based upon the combined bushel capacity of said warehouses.

SECTION 18. AMENDMENT. Section 64-02-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-10. Fee schedule for inspection of weighing and measuring devices. The director or other employee of the department of weights and measures shall charge and collect fees in accordance with the following schedule:

- 1. For inspecting railroad track scales ~~\$75-00~~ 80.00
- 2. For inspecting livestock and vehicle scales eight thousand pounds [3628.74 kilograms] capacity and under 35.00

- 3. For inspecting livestock and vehicle scales over eight thousand pounds [3628.74 kilograms] capacity ~~75-00~~ 80.00

- 4. For inspecting livestock scales under the jurisdiction of Packers and Stockers Act of the federal department of agriculture ~~75-00~~ 80.00

- 5. For inspecting livestock scales under the jurisdiction of Packers and Stockers Act of the federal department of agriculture, where in the discretion of the director of weights and measures or his employee, the sales ring or buying station scale owner transports to the scale and furnishes all test weights and manpower needed to properly test the scale 45.00

- 6. For inspecting auxiliary beam on livestock, motor truck, motor truck dump scales 15.00

- 7. For inspecting road construction truck scales ~~75-00~~ 80.00

- 8. For inspection of road construction hopper scales, six thousand and one pounds [2722.01 kilograms] capacity and over 35.00

- 9. For inspecting overhead track scales, hopper scales, dormant scales, and hanging scales six thousand pounds [2721.55 kilograms] capacity and over 35.00
 - For inspecting overhead track scales, dormant scales, hanging scales, and hopper scales five thousand nine hundred ninety-nine pounds [2721.10 kilograms] and less capacity, each 20.00

- 10. For inspecting movable platform scales 6.00

11.	For inspecting all counter and computing scales	5-00	<u>6.00</u>
12.	For inspecting every patent balance, beam steel yard, or other instrument used for weighing other than the above enumerated, each	5-00	<u>6.00</u>
13.	For inspecting any two-bushel [70.48 liter] or one-bushel [35.24 liter] measure	5-00	<u>6.00</u>
14.	For inspecting any other dry measure, each	5-00	<u>6.00</u>
15.	For inspecting any board of cloth measure, each	5-00	<u>6.00</u>
16.	For inspecting any liquid measure or computing pump	5-00	<u>6.00</u>
17.	For each inspection of any liquid measure or computing pump in addition to the regularly scheduled annual inspection, including inspections made for new equipment which replaces a rejected measuring device	5-00	<u>6.00</u>
18.	For inspecting liquid measures of five gallons [18.93 liters] or less capacity, each	5-00	<u>6.00</u>
19.	For inspecting gasoline and fuel oil meters	12-00	<u>15.00</u>
20.	For inspecting gasoline and fuel oil meters on common carrier pipelines, and any other meters used in loading railway cars, transports, or other conveyances	30-00	<u>35.00</u>
21.	For inspecting propane and liquid fertilizer meters	20-00	<u>25.00</u>
22.	For calibrating truck tanks of one thousand gallons [3785.41 liters] capacity and under		30.00

Truck tanks between one thousand and one gallons [3789.10 liters] and six thousand gallons [22,712.47 liters] 40.00

Truck tanks above six thousand gallons [22,712.47 liters] 50.00

23. For inspection of Crane scales six thousand pounds [2721.55 kilograms] and less capacity, each 30.00

For inspection of Crane scales six thousand and one pounds [2722.01 kilograms] capacity and over, each 50.00

Where a rejected weighing and measuring device has been reconditioned or replaced by new equipment, the same must be reinspected and a certificate issued before being put into use, and except as otherwise provided above, the fee charged for such reinspection and certification shall be the same as for the first inspection and certification. When the director or other employee of the department of weights and measures finds any of the instruments or articles used in weighing or measuring to be out of allowable tolerance set by the commission, the director or other employee shall inform the owner or operator that his weighing or measuring equipment is out of tolerance and to instruct him that a competent serviceman is to be called to service the device and bring said device to allowable tolerance.

Whenever a special inspection of any measuring device is required, in addition to the regularly scheduled annual inspection made by the department, a charge of fifty cents per mile [1.61 kilometers] will be made unless the motor vehicle, including the testing equipment necessary to perform such special inspection, weighs less than ten thousand pounds [4535.92 kilograms] gross. If the motor vehicle weighs less than ten thousand pounds [4535.92 kilograms] gross, a charge of twenty-five cents per mile [1.61 kilometers] will be made, and all such mileage charges shall be in addition to the regular inspection fee to cover the costs of the additional travel by the director or employee occasioned by such special inspection. Where a special inspection has been requested and the person requesting such special inspection fails to appear at the arranged hour, or fails to have the weighing or measuring device in readiness for inspection or for repair or maintenance work at the arranged hour, there shall be a charge of thirty dollars an hour for the time interval between the arranged hour and the hour at which the inspection can be commenced.

SECTION 19. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary, to the secretary of state for the preparation, printing, and distribution of the North Dakota Blue Book, for the period beginning with the effective date of this Act and ending June 30, 1989.

SECTION 20. DUTIES OF THE SECRETARY OF STATE.

1. In organizing and preparing the content of the Centennial edition of the North Dakota Blue Book, the secretary of state shall consult with representatives from the North Dakota library community.
2. Printing and binding of the North Dakota Centennial edition of the Blue Book must be let as a special class of printing upon competitive bidding to the lowest bidder.
3. The North Dakota Centennial edition of the Blue Book must include color photograph reproductions where appropriate including one of Representative Haugland, and it may not contain more than six hundred pages and the number to be printed may not exceed four thousand volumes.
4. The secretary of state shall print, furnish, and distribute the North Dakota Blue Book as follows:
 - a. One copy to each member of the legislative assembly.
 - b. Three copies to the state historical society.
 - c. Two copies to the state law library.
 - d. Two copies to each of the college and university libraries in the state.
 - e. Ten copies to the legislative council.
 - f. One copy to each public institution maintained by the state.
 - g. One copy to each elective and appointive state officer.
 - h. One copy to each public library in the state.
 - i. One copy to each county auditor.
 - j. One copy to each public high school and junior high school in the state.
 - k. One copy to each supreme court justice.

1. One copy to each district judge.
5. After making the distribution required by subsection 4, the secretary of state shall provide for the sale of the Blue Book through state agencies and may negotiate with North Dakota licensed private vendors and state agencies to allow for sales at various locations throughout the state. The secretary of state shall establish the price of the Blue Book. All proceeds received by the state must be deposited in the state general fund.

SECTION 21. LEGISLATIVE INTENT CONCERNING REPLICATION OF BLUE BOOK. The fiftieth legislative assembly dedicates this republication of the North Dakota Blue Book in the honor of the North Dakota Centennial to be observed in 1989. The fiftieth legislative assembly wishes to recognize the following:

1. The Centennial is a most appropriate time to recognize the accomplishments of North Dakota citizens by reviewing:
 - a. Events of historic significance in the continuing evolution of the state.
 - b. The relationship of the state to its political subdivisions and to the federal government.
 - c. Functions of the executive, legislative, and judicial branches of state government including the place of past and present leaders.
 - d. The development of counties, cities, townships, and special districts.
 - e. The diversity of the state's social and cultural heritage.
 - f. The basis for the primary components of the state's economy.
 - g. The condition of the state's physical environment.
 - h. Places, emblems, symbols, and awards unique to North Dakota.
2. The Centennial is a most appropriate time to celebrate the pride North Dakotans harbor for their state.
3. The Centennial is a time to reflect on the good and sometimes difficult times that North Dakota citizens have had in the past 100 years.
4. The Centennial is "a people celebration".

SECTION 22. SPECIAL RECOGNITION. The fiftieth legislative assembly hereby directs that this republication of the North Dakota Blue Book give special recognition to the Honorable Brynhild Haugland. Representative Haugland has served in the North Dakota legislative assembly continuously since 1939, in twenty-five consecutive legislative sessions, and is the senior state legislator in the United States.

SECTION 23. ADDITIONAL INCOME - APPROPRIATION - STATE TREASURER. There is hereby appropriated to the state treasurer, upon approval of the emergency commission, for the biennium beginning July 1, 1987, and ending June 30, 1989, the sum of \$11,000, or so much thereof as may be necessary, from funds received from nongeneral fund sources for the purpose of defraying the expenses of participating in organizations benefiting the state of North Dakota.

SECTION 24. EMERGENCY. Sections 19, 20, 21, and 22 of this Act are declared to be emergency measures and are in effect upon their filing with the secretary of state or on a date specified in this Act.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 71

SENATE BILL NO. 2562
 (Senators Thane, Lips, Satrom)
 (Representatives Hoffner, C. Williams, Martinson)
 (Approved by the Committee on Delayed Bills)

CONTINGENT STATE EMPLOYEE COMPENSATION

AN ACT for a contingent appropriation for additional compensation to North Dakota state employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The sums hereinafter listed, or so much thereof as may be necessary, are hereby appropriated, subject to the availability of state general fund revenues as provided for in section 2 of this Act, out of the general fund and from special funds or moneys derived from federal funds or income in the state treasury as indicated to the agencies and institutions of state government named for the purpose of providing additional compensation to employees for the various agencies and institutions for the period beginning July 1, 1988, and ending June 30, 1989:

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUND	TOTAL
Governor	\$ 15,364		\$ 15,364
Lieutenant governor	1,070		1,070
Secretary of state	20,950	\$ 5,572	26,522
Office of management and budget	77,523	12,620	90,143
Central data processing		147,024	147,024
State auditor	52,223	12,063	64,286
Central duplicating		18,198	18,198
State treasurer	9,221		9,221
Attorney general	96,090	26,393	122,483
Tax commissioner	180,150		180,150
Director of institutions	80,249		80,249
Motor vehicle department		56,842	56,842
Legislative council	43,901		43,901
Supreme court	55,256		55,256
Judicial qualifications	3,782		3,782
District courts	150,928		150,928
Public employees retirement board		17,218	17,218
Superintendent of public	38,506	60,276	98,782

instruction			
Division of independent study	30,002		30,002
Board of higher education	16,690		16,690
State industrial school	94,075	3,278	97,353
Commissioner of university and school lands		19,459	19,459
Bismarck state college	191,389		191,389
NDCS-Devils Lake	54,165		54,165
UND-Williston	65,998		65,998
University of North Dakota	1,260,943		1,260,943
Medical center		287,649	287,649
rehabilitation hospital			
University of North Dakota medical center	461,792	273,545	735,337
State toxicologist	9,183		9,183
North Dakota	1,085,163		1,085,163
state university			
North Dakota state	409,911		409,911
college of science			
SUND-Dickinson	168,740		168,740
SUND-Mayville	107,910		107,910
SUND-Minot	338,081		338,081
SUND-Valley City	153,057		153,057
NDSU-Bottineau	65,016		65,016
North Dakota forest service	20,877		20,877
State library	25,756		25,756
School for the deaf	64,524		64,524
School for the blind	47,003		47,003
Teachers' fund for retirement		10,803	10,803
Board of vocational education	18,447	25,038	43,485
Department of health and consolidated laboratories	199,002	132,668	331,670
Grafton state school	205,214	893,950	1,099,164
State hospital	872,707		872,707
Veterans' home		35,839	35,839
Indian affairs commission	3,646		3,646
Department of veterans' affairs (veterans' postwar trust fund)		5,584	5,584
Department of human services	859,358	214,839	1,074,197
Governor's council on human resources	2,590	1,344	3,934
Protection advocacy project	27,787	4,735	32,522
Insurance commissioner (Insurance regulatory trust fund)		30,306	30,306
Industrial commission	42,346		42,346
Labor commissioner	6,539		6,539
Public service commission	53,964	16,866	70,830
Weather modification board	2,700	1,267	3,967
Aeronautics commission		10,167	10,167
Department of banking and financial institutions	29,295		29,295
Securities commissioner	7,278		7,278

Bonding fund		664	664
Fire and tornado fund		4,205	4,205
Bank of North Dakota		185,835	185,835
Housing finance agency		39,674	39,674
Mill and elevator association		76,900	76,900
OASIS and social security		3,909	3,909
Workmen's compensation bureau		79,937	79,937
Job service		584,002	584,002
Parole and probation office	38,874		38,874
Highway patrol		257,299	257,299
Radio communications		33,138	33,138
Division of emergency management	5,685	18,892	24,577
Civil air patrol	780		780
State penitentiary	182,049		182,049
Penitentiary industries		22,350	22,350
Adjutant general	21,770		21,770
Economic development commission	17,796	17,546	35,342
Commissioner of agriculture	32,661	5,632	38,293
Milk stabilization board		6,667	6,667
Sunflower council		1,061	1,061
Agricultural products utilization commission		2,477	2,477
Seed department		38,600	38,600
Livestock sanitary board	6,846		6,846
Wheat commission		9,233	9,233
Upper Great Plains transportation institute	3,920	3,080	7,000
Extension division	129,158	157,860	287,018
Cooperative extension service - nutrition		12,656	12,656
Northern crops institute	6,603	1,352	7,955
Main experiment station	245,819	201,124	446,943
Branch experiment stations	48,521	490	49,011
Agronomy seed farm		3,966	3,966
Land reclamation research center		26,494	26,494
Historical society	55,446	3,248	58,694
Council on the arts	4,752	1,205	5,957
Soil conservation committee	6,677		6,677
Geological survey	24,627		24,627
Game and fish department		132,721	132,721
Parks and recreation department	42,173	1,642	43,815
Water commission	88,107	2,240	90,347
Southwest water pipeline		4,623	4,623
Highway department		1,191,989	1,191,989
Total	<u>\$8,788,625</u>	<u>\$5,456,254</u>	<u>\$14,244,879</u>

SECTION 2. CONTINGENT APPROPRIATION. One-half of the amounts appropriated in section 1 of this Act shall be made available on January 1, 1989, only upon determination by the director of the office of management and budget that estimated general fund revenues for the biennium ended June 30, 1989, are greater than estimated at the close of the fiftieth legislative assembly by \$4,400,000.

SECTION 3. CONTINGENT APPROPRIATION. On January 1, 1989, the remaining one-half of the amounts appropriated in section 1 of this Act shall be made available retroactively to July 1, 1988, only upon determination by the director of the office of management and budget that estimated general fund revenues for the biennium ended June 30, 1989, are greater than estimated at the close of the fiftieth legislative assembly by \$8,800,000.

SECTION 4. LEGISLATIVE INTENT. The amounts appropriated pursuant to the provisions of this Act shall only be available to state agencies and institutions for employee compensation increases on January 1, 1989, to be paid on February 1, or later, that do not exceed two percent plus \$50 per month for each employee.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 72

SENATE BILL NO. 2904
 Select Committee on Appropriations
 (At the request of the Office of Management and Budget)
 (Approved by the Committee on Delayed Bills)

APPROPRIATION REDUCTIONS

AN ACT to provide for the reduction in general fund appropriation authority; to provide for a reduction in coal development impact fund appropriation authority; to provide for a transfer of coal development impact funds; to amend and reenact subsection 2 of section 15-40.1-06 of the North Dakota Century Code, relating to educational support per pupil; to provide for a contingent appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. The sums hereinafter listed shall reduce the general fund appropriation authority enacted by the forty-ninth legislative assembly of the state of North Dakota as adjusted by the allotment process for the various agencies and institutions named herein for the period beginning December 1, 1986, and ending June 30, 1987:

AGENCY OR INSTITUTION	GENERAL FUND REDUCTION
Homestead Tax Credit	\$ 750,000
Office of Management and Budget	300,000
Director of Institutions	240,000
State Communications	760,000
Department of Public Instruction	5,264,000
School for the Deaf	200,000
Health Department	300,000
State Hospital	100,000
Public Service Commission	142,000
Department of Banking and Financial Institutions	50,000
State Penitentiary	100,000
Roughrider Industries	72,000
State Water Commission	150,000

The director of each agency or institution listed herein shall inform the director of the office of management and budget as to the resulting line item reduction for accounting purposes.

SECTION 2. The appropriation authority enacted by the forty-ninth legislative assembly of the state of North Dakota as adjusted by the allotment process from the coal development impact fund is hereby reduced by the sum of \$2,000,000 to the energy development impact office for the period beginning December 1, 1986, and ending June 30, 1987.

SECTION 3. APPROPRIATION - TRANSFER TO GENERAL FUND. There is hereby appropriated \$2,000,000 from the coal development impact fund to the general fund in the state treasury for the period beginning December 1, 1986, and ending June 30, 1987. The office of management and budget shall make such transfers when it determines it is appropriate.

SECTION 4. AMENDMENT. Subsection 2 of section 15-40.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. a. The educational support per pupil during the first year of the 1985-87 biennium shall be one thousand four hundred twenty-five dollars and for the second year of the biennium the educational support per pupil shall be one thousand ~~four~~ three hundred ~~fifty-five~~ seventy dollars and shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in sections 15-40.1-07 and 15-40.1-08.
- b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 shall be supported in the amount of two hundred twenty dollars, which shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07.

SECTION 5. CONTINGENT APPROPRIATION.

1. The director of the office of management and budget shall consult the tax commissioner and state treasurer prior to June 10, 1987, and determine general fund revenue receipts for the period from July 1, 1985, through May 31, 1987, utilizing usual state accounting practices. The director of the office of management and budget shall certify the amount of receipts so determined to the governor on or before June 15, 1987.
2. If the amount certified under subsection 1 exceeds \$889,000,000, the educational support per pupil during the second year of the 1985-87 biennium shall be \$1,410 and there is hereby appropriated out of any moneys in the

general fund in the state treasury, not otherwise appropriated, the sum of \$5,100,000, or so much thereof as may be necessary, to the department of public instruction for the purpose of providing additional per pupil support for the biennium beginning July 1, 1985, and ending June 30, 1987.

SECTION 6. EFFECTIVE DATE. This Act is retroactively effective on December 1, 1986.

Approved December 9, 1986
Filed December 9, 1986

GENERAL PROVISIONS

CHAPTER 73

HOUSE BILL NO. 1050
(Legislative Council)
(Interim Judiciary Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 6-05-06, 10-06-01, subsection 3 of section 10-19.1-92, section 10-19.1-123, subsection 1 of section 10-30.1-04, sections 11-28.3-06, 21-03-09, 26.1-03-03, subsection 2 of section 26.1-18-28, section 26.1-21-22, subsection 3 of section 26.1-27-06, subsection 7 of section 26.1-33-05, sections 28-22-02, 29-07-01.1, 34-01-09.1, subsection 2 of section 34-11.1-04, sections 34-13-15, 35-08-04, 37-17.1-20, subsection 2 of section 39-10-07, sections 39-10-69, 39-10.1-01, 39-10.1-08, 39-20-12, 40-05-02, subsection 6 of section 41-09-42, sections 43-01-20, 43-33-07, 45-11-01, 50-06-05.2, subsection 1 of section 50-06-05.3, sections 54-14-03.1, 54-40-01, 54-54-03, 57-02-14, 57-11-03, 57-23-08, 57-28-18, 57-38-30.3, 61-21-46, and 65-14-01 of the North Dakota Century Code, relating to improper, inaccurate, redundant, or obsolete references; and to repeal section 35-20-10 of the North Dakota Century Code, relating to lien notices for federal taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 6-05-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-06. Directors - Qualifications - Terms - Vacancies. All the corporate powers of such a corporation shall be exercised by a board of directors of not less than nine nor more than fifteen in number, and such officers and agents as it shall elect or appoint. A majority of the directors must be citizens of this state, and every director must own in his own right, free from hypothecation or pledge for any debt, at least ten shares of capital stock of the corporation of which he is a director, which said shares shall be known as "director's qualifying shares" and which shall be so marked across the face and retained ~~in~~ by the trust company, as provided in section 6-03-03 during the whole time that director continues in office, subject to inspection at all times by the commissioner or any authorized examiner. Any director who ceases to be the owner of

* NOTE: Section 6-05-06 was also amended by section 1 of Senate Bill No. 2383, chapter 110.

ten shares of stock, free and nonhypothecated, or who becomes in any manner disqualified, shall vacate his office thereupon. Every director, when elected or appointed, shall take the oath specified in section 6-03-04. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, shall be transmitted at once to the commissioner to be filed in ~~his~~ the commissioner's office. The articles of incorporation must state the names and residences of the first board of directors, of whom the first named one-third shall serve for a period of three years, the second one-third named for a period of two years, and the balance thereof shall serve for a period of one year from the date fixed for the commencement of such corporation. In case any of the persons so named ~~shall~~ do not become stockholders to the amount required to qualify, or if they fail or refuse to qualify from any cause, the directors who ~~shall~~ qualify must elect qualified stockholders to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors shall be elected to serve three years in place of those whose terms then ~~shall~~ expire.

SECTION 2. AMENDMENT. Section 10-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited - Retention of mineral interests prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation may be a partner in a partnership that is in the business of farming or ranching only if that corporation complies with this chapter. For land and minerals acquired after July 1, 1985, any corporation which acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and that is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation divests itself of the land pursuant to this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

A business corporation organized under chapter ~~10-19~~ 10-19.1 may convert to a farm corporation by adopting an amendment to its articles of incorporation. The amendment must specify that the corporation elects to be subject to this chapter, and the corporation does comply with all requirements of this chapter. The amendment must be filed with the prescribed fee and with the initial report required by section 10-06-07.3.

SECTION 3. AMENDMENT. Subsection 3 of section 10-19.1-92 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization. The provisions of chapter ~~13-02~~ 13-02.1 do not apply to distributions made by a corporation governed by this chapter.

SECTION 4. AMENDMENT. Section 10-19.1-123 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-19.1-123. Deposit with state treasurer of amount due certain shareholders - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the state treasurer for disposition pursuant to chapter ~~47-30~~ 47-30.1. The amount deposited is appropriated to the state treasurer and must be paid over to the shareholder or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

SECTION 5. AMENDMENT. Subsection 1 of section 10-30.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To carry out the purposes of this chapter, venture capital corporations may be formed under chapters ~~10-19~~ 10-19.1 through 10-23. The articles of incorporation of a venture capital corporation must comply with subsections 2 through 9.

SECTION 6. AMENDMENT. Section 11-28.3-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-06. Organization - Board of directors. At the time and place fixed by the county auditor for the public meeting as provided in section 11-28.3-05, the qualified electors present who reside within the boundaries of the district shall proceed to organize the district. Permanent organization shall be effected by the election of a board of directors consisting of not less than five nor more than ten residents of the district. The board of directors shall

meet as soon after the organizational meeting as possible to elect a president, a vice president, and a secretary-treasurer. All directors and officers shall be elected for two years and hold office until their successors have been elected and qualified, except that at the first election the vice president shall be elected as provided in this section for a one-year term, and one-half, or as close to one-half as possible depending upon the total number of directors, of the directors elected at the first election ~~following the effective date of this section~~ after July 1, 1977, shall be selected by lot in the presence of a majority of such directors to serve one-year terms. All officers and directors shall serve without pay.

SECTION 7. AMENDMENT. Section 21-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-09. Initial resolution - Form. Proceedings for the issuance of bonds under the authority of this chapter shall be instituted by the adoption of an initial resolution therefor. Such initial resolution shall state:

1. The maximum amount of bonds proposed to be issued.
2. The purpose for which they are proposed to be issued.
3. The assessed valuation of all taxable property in the municipality as defined in section 21-03-01.
4. The total amount of bonded indebtedness of the municipality.
5. The amount of outstanding bonds of the municipality issued for a similar purpose.
6. Any other statement of fact deemed advisable by the governing body ~~of~~ or voters proposing the same.

SECTION 8. AMENDMENT. Section 26.1-03-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-03. Cooperative and assessment life associations - Valuation of policies. Cooperative or assessment life associations shall be admitted to transact business in this state upon compliance with the provisions of this title relating to the licensing and admission of life insurance companies without being required to value their policies in conformity with chapter ~~26-10-1~~ 26.1-35. These associations must value their policies in the same manner as yearly renewable term policies are valued, according to the standard of valuation of life insurance policies prescribed by this title.

SECTION 9. AMENDMENT. Subsection 2 of section 26.1-18-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of sections 26.1-18-12, and 26.1-18-14, ~~26-1-18-15,~~ and ~~26-1-18-16.~~

SECTION 10. AMENDMENT. Section 26.1-21-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-21-22. Publication of statement of fund - Biennial report to governor and office of management and budget. The commissioner, on or about the first day of December in each year after the regular session of the legislative assembly, shall publish in four newspapers of ~~federal~~ general circulation within the state a copy of the statement of the commissioner's work and of the condition of the fund during the two preceding fiscal years. The commissioner shall submit a biennial report as prescribed by section 54-06-04 to the governor and to the office of management and budget.

SECTION 11. AMENDMENT. Subsection 3 of section 26.1-27-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A provision that withdrawals from the fiduciary account may be made only for:
 - a. Remittance to an insurer entitled thereto.
 - b. Deposit in an account maintained in the name of the insurer.
 - c. Transfer to and deposit in a claims paying account, with claims to be paid as provided in section ~~26-17-2-08~~ 26.1-27-10.
 - d. Payment to a group policyholder for remittance to the insurer entitled thereto.
 - e. Payment to the administrator of its commission, fees, or charges.
 - f. Remittance of return premiums to the person or persons entitled thereto.

SECTION 12. AMENDMENT. Subsection 7 of section 26.1-33-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. A provision that after the policy has been in force three years, the company at any time while the policy is in force, will advance on proper assignment of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the owner of

the policy, less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, computed according to a mortality table, interest rate, and method of valuation permitted by chapter ~~26-10-1~~ 26.1-35, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from the loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. The provision may provide further that the loan may be deferred for not exceeding six months after the application for the loan is made. It must be stipulated further in the policy that failure to repay any advance or to pay interest thereon does not void the policy unless the total indebtedness thereon to the company equals or exceeds the loan value at the time of the failure nor until one month after notice has been mailed by the company to the last known address of the insured and of the assignee, if any. No other condition may be exacted as a prerequisite to any such advance. This provision is not required in a policy of term insurance.

SECTION 13. AMENDMENT. Section 28-22-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-02. Absolute exemption. The property mentioned in this section is absolutely exempt from all process, levy, or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. The family Bible and all schoolbooks used by the family and all other books used as a part of the family library not exceeding in value one hundred dollars.
5. All wearing apparel and clothing of the debtor and his family.
6. The provisions for the debtor and ~~his~~ the debtor's family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.
7. The homestead as created, defined, and limited by law.
8. All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed one hundred sixty acres [64.75 hectares] of land in one tract occupied by the debtor, either as owner or tenant, as ~~his~~ the debtor's

home, but the provisions of this subsection in no way ~~shall~~ affect seed, ~~farm labor~~, thresher, or landlord liens, and if the debtor takes advantage of this subsection he shall the debtor may not avail himself of take any additional alternative exemptions provided under this chapter.

9. All insurance benefits resulting from insurance covering any or all of the absolute exemptions.
10. Any housetrailer or mobile home occupied as a residence by the debtor or ~~his the debtor's~~ family, except that it ~~shall is~~ not be exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55.

* SECTION 14. AMENDMENT. Section 29-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-07-01.1. Payment of expenses for defense of indigents. Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection ~~7~~ 8 of section 27-07.1-17. A defendant with appointed counsel shall pay to the county or state such sums as the court shall direct. The state's attorney of the county wherein the action was prosecuted shall seek recovery of any such sums any time he determines the person for whom counsel was appointed may have funds to repay the county or state within six years of the date such amount was paid on his behalf.

SECTION 15. AMENDMENT. Section 34-01-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-01-09.1. Maximum hours of labor. No employee, other than the chief, of a fire department in any city of North Dakota with a population of twenty thousand or more inhabitants, ~~shall be is~~ required to work more than one hundred forty-four hours in any two-week period but ~~shall be is~~ subject to call while off duty in case of emergency not to exceed more than one hundred forty-four hours in this two-week period. Any person who ~~shall violate~~ violates any provision of this section ~~shall be is~~ guilty of a misdemeanor and ~~shall must~~ be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

SECTION 16. AMENDMENT. Subsection 2 of section 34-11.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 29-07-01.1 was also amended by section 2 of Senate Bill No. 2040, chapter 375, by section 1 of Senate Bill No. 2105, chapter 393, and by section 1 of Senate Bill No. 2493, chapter 392.

2. For having made a report under subsection 1 no employee will:
 - a. Be dismissed from employment.
 - b. Have salary increases ~~of~~ or employment-related benefits withheld.
 - c. Be transferred or reassigned.
 - d. Be denied a promotion which the employee otherwise would have received.
 - e. Be demoted.
 - f. Be discriminated against in any term or condition of employment.

SECTION 17. AMENDMENT. Section 34-13-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-13-15. Employment agent requirements. In addition to the foregoing ~~rules~~ sections governing specific classifications, the following ~~rules~~ shall govern each and every employment agent:

1. Every license, of whatever classification, shall be hung in a conspicuous place in the main office of the employment agency.
2. No fee ~~shall~~ may be solicited or accepted as an application or registration fee by any employment agent for the purpose of being registered as an applicant for employment.
3. Every employment agent shall give to every person from whom the payment of a service charge is received for services rendered or to be rendered, or assistance given or to be given, a receipt bearing the name and address of the employment agency, the name and address of the employment agent, the amount of the payment, the date of the payment and for what it is paid. Every receipt to an applicant by an employment agent ~~shall~~ must be numbered and bound in duplicate form. A duplicate copy of each receipt ~~shall~~ must be kept at least one year.
4. Every employment agent shall keep a record of all services rendered employers and employees. This record ~~shall~~ must contain the name and address of the employer by whom the services were solicited, the name and address of the employee, kind of position offered by the employer, kind of position accepted by the employee, probable duration of the employment, rate of wage or salary to be paid the employee, amount of the employment agent's service charge, dates and amounts of payments, date and amount of refund,

if any, and for what, and a space for remarks under which ~~shall~~ must be recorded anything of an individual nature to amplify the foregoing report and as information in the event of any question arising concerning the transaction. Such records ~~shall~~ must during business hours be open to the inspection of the commissioner at the address where the employment agency is conducted for the purpose of satisfying the commissioner that they are being kept in conformity with this ~~rule~~ section. Upon written complaint being made, the commissioner may require of the employment agent against whom the complaint is made a detailed account under oath in writing of the transaction referred to in the complaint. ~~in the event~~ if the commissioner has reason to question the detailed report so submitted by the employment agent, the commissioner ~~shall~~ have authority to ~~may~~ demand of the employment agent the production of these records for examination by ~~him~~ the commissioner, or his ~~the commissioner's~~ agent, at such place as the commissioner may designate.

5. No employment agent ~~shall~~ may send out any applicant for employment without having obtained, either orally or in writing, a bona fide order, and if no employment of the kind applied for existed at the place to which the applicant was directed, the employment agent shall refund to the applicant, within forty-eight hours of demand, any sums paid by the applicant for transportation in going to and returning from the place, and all fees paid by the applicant. ~~Nothing in this~~ This chapter shall be construed to ~~does not~~ prevent an employment agent from directing an applicant to an employer where the employer has previously requested that he be accorded interviews with applicants of certain types and qualifications, even though no actual vacancy existed in the employer's organization at the time the applicant was so directed; nor ~~shall~~ does it prevent the employment agent from attempting to sell the services of an applicant to the employer even though no order has been placed with the employment agent; provided, that in any case the applicant is acquainted with the facts when directed to the employer, in which event no employment agent ~~shall~~ be is liable to any applicant as provided in this ~~rule~~ section.
6. No employment agent ~~shall~~, by himself may, personally, or by ~~his~~ an agent or agents, solicit, persuade, or induce any employee to leave any employment in which the employment agent or his agents has placed the employee. Nor ~~shall~~ may any agent, by himself personally or through any ~~of his agents~~ agents, persuade or induce or solicit any employer to discharge any employee.
7. No employment agent ~~shall~~ may knowingly cause to be printed or published a false or fraudulent notice or

advertisement for help or for obtaining work or employment.

8. Repealed by S-L- 1975, ch- 106, § 673-

9- No employment agent ~~shall~~ may place or assist in placing any person in unlawful employment.

~~10-~~ 9. No employment agent ~~shall~~ may fail to state in any advertisement, proposal, or contract for employment, that there is a strike or lockout at the place of proposed employment, if he ~~the agent~~ has knowledge that such condition exists.

~~11-~~ 10. Any person who shall split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employee with any employer, or person in any way connected with the business thereof, ~~shall be~~ is guilty of a class A misdemeanor.

* SECTION 18. AMENDMENT. Section 35-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-08-04. Lien for furnishing motor fuel - Filing. Any person who furnishes gasoline, diesel fuel, tractor fuel or other motor fuel to another to be used for the production of any agricultural crop ~~shall be~~ is entitled to a lien upon all crops produced by the use of such fuel to secure the payment of the purchase price thereof upon compliance with the provisions of this section. At any time after the fuel has been furnished, but in no event later than the first day of November in the year such fuel was furnished, the person selling such fuel shall perfect ~~his~~ the lien by filing in the office of the register of deeds of the county in which the crop is produced a verified statement showing the name and address of the person claiming the lien, the name of the person to whom the fuel has been furnished, the name of the crop or crops grown by such purchaser, a description of the land upon which the crop was grown, and the amount of fuel furnished. From and after the date of filing the statement provided in this section, the claimant shall have a lien upon the crops therein described to the amount of the purchase price of the fuel sold. Such lien ~~shall have~~ has priority over all other liens except threshing liens, seed liens, ~~farm labor liens,~~ and crop production liens. The register of deeds shall charge a fee of one dollar for the filing of a verified statement perfecting the lien. ~~Such~~ The lien ~~shall~~ must be indexed and filed in the same manner as chattel mortgages are filed and may be satisfied by an instrument similar to a satisfaction of chattel mortgages.

SECTION 19. AMENDMENT. Section 37-17.1-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-20. Community disaster loans. In accordance with the provisions of the United States Disaster Relief Act of 1974 [Pub. L.

* NOTE: Section 35-08-04 was also amended by section 2 of Senate Bill No. 2295, chapter 155.

93-288; 88 Stat. 143], the governor is authorized to enter into such agreements and execute such assurances on behalf of the state of North Dakota as may be necessary to establish, in the event of a presidentially declared "major disaster", a program of community disaster loans in those cases where communities are unable to meet or provide for their essential governmental functions through assistance under provisions other than section 414 of the Disaster Relief Act or through other means. Upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a disaster and has demonstrated a need for financial assistance to perform its governmental functions ~~to~~, the governor may apply to the federal government, on behalf of the local government, for a loan; and ~~to~~ receive and disburse the proceeds of any approved loan to any applicant local government.

The governor ~~shall be authorized~~ may:

1. ~~To determine~~ Determine the amount needed by any applicant local government to restore or resume its governmental functions, and ~~to~~ certify the same to the federal government. No application amount ~~shall~~ may exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the disaster occurs.
2. ~~To recommend~~ Recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, within three fiscal years following the disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a county or city.

SECTION 20. AMENDMENT. Subsection 2 of section 39-10-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. This section ~~shall~~ does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings ~~shall be~~ is governed by the ~~rules~~ as requirements set forth in section 39-10-41.

SECTION 21. AMENDMENT. Section 39-10-69 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10-69. Charging violation and proving negligence in civil action.

1. In every charge of violation of any speed regulation, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven, and also the maximum speed applicable within the district or at the location.

2. The provision in this ~~article~~ title declaring maximum speed limitations ~~shall~~ may not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of the accident.

SECTION 22. AMENDMENT. Section 39-10.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10.1-01. Effect of chapter - Penalty for violation.

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. Any person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.
2. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.
3. These ~~regulations~~ provisions applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

SECTION 23. AMENDMENT. Section 39-10.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10.1-08. Point system not applicable. Any violation of ~~the provisions of~~ this chapter, or any moving violation as defined in section 39-06.1-09, or any nonmoving violation as defined in section 39-06.1-08 when committed on a bicycle as defined in section 39-09-01 ~~39-01-01~~, shall not be cause for the licensing authority to assess points against the driving record of the violator pursuant to section 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or noncriminal traffic violation shall be applicable to bicyclists.

SECTION 24. AMENDMENT. Section 39-20-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-12. Liability. ~~if any~~ Any licensed physician, nurse, technician, or an employee of a hospital who ~~shall draw~~ draws blood from any person pursuant to a request of any arresting officer ~~he shall is~~ not be liable in any civil action for damages arising out of said act except for gross negligence.

* SECTION 25. AMENDMENT. Section 40-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-02. Additional powers of city council and board of city commissioners. The city council in a city operating under the council

- * NOTE: Section 40-05-02 was also amended by section 1 of House Bill No. 1105, chapter 490.

form of government and the board of city commissioners in a city operating under the commission system of government, in addition to the powers possessed by all municipalities, shall have power:

1. Street railway and railway tracks. To permit, regulate, or prohibit the locating, constructing, or laying of railway or street railway tracks in any street, alley, or public place, and any permission given to a street railway shall not be for a longer period than fifty years.
2. Sale of milk. To license the sale of milk.
3. Lumber, wood, coal, hay, and merchandise - Municipal scales. To regulate the inspecting, weighing, and measuring of lumber, firewood, coal, hay, and other articles of merchandise, to establish or purchase one or more city scales and to require dealers in hay, coal, firewood, or any other commodity, which, in the judgment of the governing body, should be weighed upon the city scales, to use such scales in the sale of such commodity, and to charge a reasonable fee for the use of such scales.
4. Fences and party walls. To regulate partition fences and party walls.
5. Jail, house of correction, workhouse. To establish, maintain, and regulate a city jail, house of correction, and workhouse for the confinement and reformation of disorderly persons convicted of violating any city ordinance, and to appoint necessary jailers and keepers.
6. Building permits. To provide by ordinance for the issuance of building permits and to fix the fees therefor.
7. Building construction - Fire escapes. To prescribe the manner of constructing buildings, structures, and the walls thereof; to require and regulate the construction of fire escapes on buildings; and to provide for the inspection of all buildings within the limits of the municipality and for the appointment of a building inspector.
8. Bridges, viaducts, tunnels, and overhead pedestrian bridges. To construct and keep in repair bridges, viaducts, overhead pedestrian bridges, and tunnels, and to regulate the use thereof.
9. Police. To regulate the police of the municipality and to pass and enforce all necessary police ordinances.
10. Hospitals and medical dispensaries. To establish, control, and regulate hospitals and medical dispensaries.

11. Census. To provide for the taking of a census of the city, but no city census shall be taken more often than once in every three years.
12. Redistricting city. To redistrict the city into wards and to prescribe the boundaries thereof.
13. Zoning. To adopt a zoning ordinance as provided in this title; to regulate the location of junk shops, coalyards, garages, machine shops, power laundries, hospitals, and undertaking establishments; and to establish building lines fixing the distance from the property line at which buildings may be erected.
14. Traffic regulation. To regulate, control, or restrict within designated zones, or congested traffic districts, except that the speed limit for vehicles on those streets designated as part of any state highway shall be as determined by mutual agreement with the state highway commissioner, the use of streets, alleys, or other public ways by various classes of traffic, except that any municipal regulations shall be ineffective as to common carriers licensed by this state under a certificate of public convenience and necessity until such regulations are approved by the public service commission.
15. Driving while intoxicated. To prohibit by ordinance the operation of any motor vehicle or other conveyance upon the streets, alleys, or other public or private areas to which the public has a right of access for vehicular use within the city by any person under the influence of intoxicating liquor or a controlled substance.
16. Tourist camps. To license, regulate, and fix the location of any public or private tourist camp within the city.
17. Water supply. To withdraw from any stream, watercourse, or body of water within or without a city, or within or without, or bordering upon, this state, a supply of water reasonably sufficient for the needs of the inhabitants of the city, and to supply the facilities for the storage of water for all other necessary municipal purposes.
18. Dams for municipal water purposes. To erect dams upon or across streams, watercourses, or bodies of water within or without, or bordering upon, the boundaries of this state, and to improve, alter, or protect the bed, banks, or course thereof.
19. Water supply - Acquire necessary property. To acquire by gift, grant, lease, easement, purchase, or by eminent domain, and to own, operate, maintain, and improve, all lands, structures, power plants, public works, and personal property, whether within or without this state,

- necessary for the maintenance and conservation of its water supply.
20. Abandoned or unclaimed personal property. To provide by ordinance for the taking, storage, and disposal of any personal property abandoned or left unclaimed upon the streets, alleys, or other public ways of the city for a period exceeding ten days, and, after holding such property for a period of not less than sixty days, to sell the same at public sale after a notice published or posted at least ten days before the sale, and at such place, and in such manner as may be provided by ordinance. Upon the sale of the property, the city shall convey to the purchaser a merchantable title by a bill of sale. At any time within six months after the sale, the owner of the property, upon written application, shall be entitled to receive the proceeds of the sale from the city, less the necessary expense of taking, storing, and selling the property. The owner of the property may reclaim it at any time prior to the sale upon payment of the necessary expense of taking and storing.
 21. Auditoriums and public buildings. To take charge of a fully completed auditorium or other property originally purchased or acquired for public use by public subscription, donation, sale of stock, or otherwise, where such auditorium or other property has been abandoned or lost by the original owner or owners, their successors or assigns, and to operate, maintain, repair, and keep such property for public use. In the ownership, management, use, or operation thereof, the city shall be deemed to be exercising a governmental function.
 22. Dogs. To license dogs, and to regulate the keeping of dogs including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public.
 23. ~~Sale of pistols. To regulate the sale of pistols as prescribed in title 62-~~
 - 24- Substandard buildings or structures. The governing body of any city shall have the authority to provide by ordinance for the demolition, repair, or removal of any building or structure located within the limits of such city or other territory under its jurisdiction, which creates a fire hazard, is dangerous to the safety of the occupants or persons frequenting such premises, or is permitted by the owner to remain in a dilapidated condition. Any such ordinance shall provide for written notice to the owner of a hearing by the governing body before final action is taken by such body. It shall also provide a reasonable time within which an appeal may be taken by the owner from any final order entered by such

governing body to a court of competent jurisdiction. This subsection shall in no way limit or restrict any authority which is now or may hereafter be vested in the state fire marshal for the regulation or control of such buildings or structures.

- 25- 24. Assault and battery. To prohibit by ordinance and prescribe the punishment for the commission of assault and battery within the jurisdiction of the city.
- 26- 25. Theft. To prohibit by ordinance and prescribe the punishment for the commission of theft, as defined by chapter 12.1-23, within the jurisdiction of the city.
- 27- 26. Peace bonds. To provide by ordinance for the issuance of peace bonds by the municipal judge in accordance with the procedure in chapter 29-02.
- 28- 27. Public transportation. To provide by ordinance for the purchase, acquisition, or establishment, and operation of a public transportation system. In the alternative to provide for payments under a contract, approved by the governing body of the city, with a private contractor, for the provision and operation of a public transportation system within the city.
- 29- 28. Traffic violation hearings. To enact an ordinance equivalent to section 39-06.1-04; provided, that the penalty assessed shall not exceed that authorized by section 40-05-06.
- 30- 29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing not more than one-half ounce [14.175 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed shall be subject to subsection 4 of section 19-03.1-23.

SECTION 26. AMENDMENT. Subsection 6 of section 41-09-42 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 6. If the debtor is a transmitting utility (subsection 5 of section 41-09-40) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection 9 6 of section 41-09-41 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

SECTION 27. AMENDMENT. Section 43-01-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-20. **Penalty.** Any person making, compiling or certifying to an abstract of title to real property in this state without first having ~~compiled~~ complied with the provisions of this chapter is guilty of a class B misdemeanor.

SECTION 28. AMENDMENT. Section 43-33-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-33-07. License by examination.

1. Applicants who do not meet the experience qualification on the ~~effective date of this chapter~~ July 1, 1969, may obtain a license by successfully passing a qualifying examination, provided the applicant:
 - a. Be Is at least eighteen years of age.
 - b. Be Is of good moral character.
 - c. Has an education equivalent to a four-year course in an accredited high school.
 - d. Is free of contagious or infectious disease.
2. The applicant for license by examination shall appear at a time, place, and before such persons as the department may designate, to be examined by means of written and practical tests in order to demonstrate that ~~he the~~ applicant is qualified to practice the fitting and sale of hearing aids. The examination administered as directed by the board constituting standards for licensing ~~shall~~ may not be conducted in such a manner that college training ~~be~~ is required in order to pass the examination. Nothing in this examination ~~shall~~ may imply that the applicant ~~shall~~ must possess the degree of medical competence normally expected of physicians.
3. The department shall give examinations once a year at a time and place to be designated by the board, and may give more frequent examinations if deemed necessary by the board.
4. In addition to all other fees, the fee for an examination to determine qualifications for license ~~shall~~ must be set by the board.

SECTION 29. AMENDMENT. Section 45-11-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-01. Use of fictitious partnership name. Every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as

partners in such business, must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. A limited partnership of a foreign limited partnership transacting business under a name filed pursuant to chapter ~~45-10~~ 45-10.1, and as otherwise provided in section 45-11-03, is not required to file a fictitious name certificate pursuant to this section.

The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of such words. This does not preclude the word "limited" from being used in conjunction with the word "partnership".
2. May not be the same as, or deceptively similar to any corporate name, trade name, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state.

SECTION 30. AMENDMENT. Section 50-06-05.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-05.2. Regional human service centers - Licensure - Collocation with county social service boards. Human services shall be delivered through regional human service centers in the areas designated by the governor's executive order 49 1978-12 dated ~~September 18, 1969~~ October 5, 1978. Services provided by regional human service centers shall include those services formerly provided by mental health and retardation service units and area social service centers. The regional human service centers shall be subject to licensing by the department. The department shall adopt rules and standards for the licensing and operation of the regional human service centers. No human service center may operate without a license issued hereunder. Regional human service centers are authorized to receive federal and other funds available to finance, in whole or in part, the services and operations of the centers. Any county social service board collocating its offices with a regional human service center shall, within the limits of legislative appropriations, be reimbursed up to fifty percent of the amount expended for space costs in excess of the amount provided by the federal government.

SECTION 31. AMENDMENT. Subsection 1 of section 50-06-05.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Regional human service centers organized under this chapter are those centers established to provide human services as authorized by law. The term "human service" means service provided to individuals or their families in need thereof to help them achieve, maintain, or support

the highest level of personal independence and economic self-sufficiency, including health, mental health, education, manpower, social, vocational rehabilitation, aging, food and nutrition, and housing service. Regional human service centers shall function as regional administrative units established, within the multicounty areas designated by the governor's executive order 49 1978-12 dated ~~September 18, 1969~~ October 5, 1978, to provide for the planning and delivery of human services.

SECTION 32. AMENDMENT. Section 54-14-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-03.1. Reports to legislative council budget ~~committee~~ section. ~~It shall be the duty of the~~ The office of the budget, in the course of the preaudit of claims against the state, or in otherwise carrying out its duties, ~~to~~ shall note irregularities in the fiscal practices of the state and its departments, agencies, and institutions and areas where more uniform and improved fiscal procedures are desirable, and it shall further note expenditures and governmental activities that it may believe to be contrary to law or to the intent of the legislative assembly. "Irregularities" as used in this section includes the use of state funds to provide bonuses, cash incentive awards, and temporary salary adjustments for state employees. The office of the budget shall submit a detailed written report accompanied by adequate documentation to the budget ~~committee~~ section of the legislative council, or any division of ~~that committee~~ the budget section designated for that purpose, setting out the irregularity, expenditure, or activity. The report shall be presented at the next scheduled meeting of the ~~committee~~ budget section following the discovery of the irregularity, expenditure, or activity.

SECTION 33. AMENDMENT. Section 54-40-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40-01. Agreement. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental unit" as used in this ~~action~~ section includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.

* **SECTION 34. AMENDMENT.** Section 54-54-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* **NOTE:** Section 54-54-03 was also amended by section 1 of Senate Bill No. 2426, chapter 661.

54-54-03. Term of office - Confirmation of appointments by senate-- Filling vacancies - Chairman - Vice chairman - Expenses. The term of office of each member shall be is five years; provided, however, that of the members first appointed, five shall must be appointed for terms of one year, five for terms of three years, and five for terms of five years. The governor shall make the initial appointments to the council within thirty days of July 1, 1967, and those members who were appointed initially and who are still serving by the next legislative session shall be confirmed or rejected by the senate, and if confirmed they shall serve for the remainder of their original terms. When the legislative assembly shall be in session at any time within six months prior to the date of the expiration of the term of any member of the council, the governor shall appoint his successor within the first five days of such session and upon the confirmation of such appointment by the senate, such successor shall take office on the date of the expiration of the term of the incumbent. When a vacancy occurs upon the council otherwise than by the expiration of the term of office of a member thereof, when the legislative assembly is not in session, or when the term of a member of the council expires more than six months after the adjournment of the session of the legislative assembly held prior to the date of the expiration of such term, the governor shall appoint a person to fill such vacancy who shall serve until the opening of the next session of the legislative assembly succeeding such interim appointment, at which time such appointment shall be certified to the senate for confirmation. If the appointment is not confirmed by the thirtieth legislative day of such session, the office so filled by interim appointment shall be deemed vacant and the governor shall appoint another for such office and the same proceedings shall be followed as provided in this section until a nomination has been confirmed by the senate. If the a vacancy to be filled occurs otherwise than by the expiration of the term of office of a member of the council, the appointment shall must be made for the balance of the term only. No person who has been nominated by the governor in accordance with this section and whose appointment the senate has failed to confirm shall be eligible for an interim appointment. Other than the chairman, no member of the council who serves a full five-year term shall be is eligible for reappointment during a one-year period following the expiration of his term. The governor shall designate a chairman and a vice chairman from the members of the council who shall serve at the pleasure of the governor. The chairman shall be the chief executive officer of the council. The members of the council shall may not receive any compensation for their services, but shall must be reimbursed for their travel expenses in the same manner and at the same rates as provided by law for other state officials for necessary travel in the performance of their duties as members of the council.

SECTION 35. AMENDMENT. Section 57-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-14. Valuation of real property exempt from taxation. At the time of making the assessment of real property in every odd-numbered

year, the assessor shall enter in a separate list each description of property exempt by law, except property of the United States, or the state of North Dakota, or of any county or municipal corporation, and shall value it in the same manner as other property, designating in each case to whom such property belongs and for what purpose used.

SECTION 36. AMENDMENT. Section 57-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-11-03. Duties of board - Limitation on increase - Notice. At its meeting, the board of equalization shall proceed to equalize and correct the assessment roll. It may change the valuation and assessment of any real ~~or personal~~ property upon the roll by increasing or diminishing the assessed valuation thereof as shall be reasonable and just to render taxation uniform, except that the valuation of any property returned by the assessor shall not be increased more than twenty-five percent without first giving the owner or his agent notice of the intention of the board to increase it. The notice shall state the time when the board will be in session to act upon the matter and shall be given by personal notice served upon the owner or his agent or by leaving a copy at his last known place of residence.

SECTION 37. AMENDMENT. Section 57-23-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-23-08. Duties of county auditor and county commissioners after abatement action. After the granting of any application for abatement or refund or compromise of any tax, the county auditor shall correct all tax lists in accordance with the order of abatement or compromise, and the applicant shall be relieved of further liability for the tax abated or compromised. If the board of county commissioners disapproves any application for abatement or refund or compromise, in whole or in part, the reasons for disapproval shall be stated thereon and the applicant may appeal the rejection of the application for abatement or refund or compromise as provided by law. The county auditor, at the close of each calendar year, shall certify to the director of the state office of management and budget the amount of state taxes canceled by action of the board of county commissioners ~~or the tax appeals board~~ and the same shall be credited to the county.

SECTION 38. AMENDMENT. Section 57-28-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-18. Terms of private sale and redemption and distribution of proceeds. Any private sale of real property made between the annual November sales shall be made upon the same terms and conditions as a sale is authorized to be made at the November sale, except that when farmland is sold after the first of January such sale will be made subject to any existing farm lease of said land for the year in

which such sale is made, and if such property is sold at private sale to any person other than the former owner, his executor or administrator, or any member of his immediate family, such sale shall be held in abeyance for a period of thirty days from the date of notice to the former owner, his executor or administrator, or any member of his immediate family, given by registered or certified mail by the county auditor, to his last known post-office address, or, if the post-office address is not known, then to the post office nearest the land, during which time the former owner, his executor or administrator, or any member of his immediate family, may make redemption by payment in full of the delinquent taxes, penalty, and interest charged against such real estate or the proposed sale price, whichever may be the lesser. If no redemption is made by the former owner, his executor or administrator, or any member of his immediate family, during said period of thirty days, then the sale shall be final and the purchaser shall be entitled to a deed as provided in this chapter. When farmlands are so redeemed after the first of January, such redemption will be made subject to any existing farm lease of said lands for the year in which such redemption is made. In case of the sale or contract for sale or redemption of tax deed land before the first of February, such land shall be assessed and taxed for the current year, and the purchaser or vendee or redemptioner shall be entitled to the rental and landlord's share of crops on such land for such year. In case of the sale or contract for purchase or redemption of tax deed land after ~~March~~ January thirty-first, the land shall not be assessed and taxed for the current year, and the county shall retain the rental and landlord's share of the crops thereon for that year. The proceeds realized from such sale shall be apportioned in the manner in which the proceeds of the annual November sale are distributed. The proceeds realized from any rental and landlord's share of the crops shall be apportioned in the manner in which other rental proceeds are distributed under the present law.

* SECTION 39. AMENDMENT. Section 57-38-30.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-30.3. Simplified optional method of computing tax.

1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. Any taxpayer electing to determine his income tax liability pursuant to this section shall only be eligible for those adjustments or credits which are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return pursuant to the provisions of this chapter, but who has not computed a federal taxable income or federal income tax liability figure shall compute such a federal taxable income figure using a pro forma return pursuant to the provisions of this section in order to determine a federal income tax liability figure

* NOTE: Section 57-38-30.3 was also amended by section 2 of House Bill No. 1901, chapter 695.

- to be used as a starting point in computing state income tax.
2. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. This tax shall be ten and one-half percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.
 3. The adjusted federal income tax liability for a resident individual, estate, and trust shall be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States or state constitutional provisions shall be excluded from the numerator.
 4. The adjusted federal income tax liability of a nonresident individual, estate, and trust shall be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States or state constitutional provisions shall be excluded from the numerator.
 5. For the purposes of this section, the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables or schedule TC, plus additional taxes due on federal income tax schedules or forms 4970, 4972, 5544, 5405, section 72(m)(5) penalty tax, 4625, 6251, and 5329, and before credit for contributions to candidates for public office, credit for the elderly (schedule R&RP), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), work incentive credit (form 4874), jobs credit (form 5884), residential energy credit (form 5695), and before reduction for federal income tax withheld, estimated payments, earned income credit, excess Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code of 1954, as amended), and the federal Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code of 1954, as amended), taxes withheld, credit for federal taxes on special fuels and oils, and regulated investment company

credits. The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 shall be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251.

6. Where a husband and wife determine their federal income tax liability for the taxable year on a joint federal income tax return they may elect to determine their North Dakota income taxes separately. The federal income tax liability shall be apportioned between them in the proportion that the adjusted gross income of each bears to their combined adjusted gross income. The adjusted gross income of each shall be determined in the same way that each would have been required to determine it if they had filed separate federal income tax returns.
7.
 - a. A resident individual, estate, or trust shall be allowed a credit against the tax otherwise due under this section for the amount of any income tax imposed on the taxpayer for the taxable year by another state or territory of the United States or the District of Columbia on income derived from sources therein and which is also subject to tax under this section.
 - b. The credit provided under this subsection shall not exceed the proportion of the tax otherwise due under this section that the amount of the taxpayer's adjusted gross income derived from sources in the other taxing jurisdiction bears to the taxpayer's entire adjusted gross income as reported on the taxpayer's federal income tax return.
8. ~~An individual, estate, or trust shall be allowed as a credit against the tax otherwise due under this section the energy cost relief credit provided for in section 57-38-29-1.~~
- 9-
 - a. Individuals, estates, or trusts receiving a refund of federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns reducing the federal income tax liability for the year for which the federal income tax refund is granted and shall not report the federal income tax refund in the year received.
 - b. Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the

year for which the additional federal income tax is assessed and shall not report increased federal income tax liability in the year in which the additional federal income tax is paid.

10- 9. The tax commissioner may prescribe procedures and guidelines to prevent requiring income that had been previously taxed under this chapter from becoming taxed again because of the provisions of this section and may prescribe procedures and guidelines to prevent any income from becoming exempt from taxation because of the provisions of this section if it would otherwise have been subject to taxation under the provisions of this chapter.

SECTION 40. AMENDMENT. Section 61-21-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-46. Maximum levy - Accumulation of fund. The levy in any year for cleaning out and repairing a drain shall not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar and fifty cents per acre [.40 hectare]. Nonagricultural property shall be assessed such sum in any one year as the ~~rationing~~ ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.
2. Agricultural lands shall be assessed uniformly throughout the entire assessed area. Nonagricultural property shall be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of such nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years. If the cost of, or obligation for, the cleaning and repair of any drain shall exceed the total amount which can be levied by the board in any two-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 prior to obligating the district for such costs.

SECTION 41. AMENDMENT. Section 65-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-14-01. Employee information program. Each employer shall implement an employee information program designed to inform employees about hazardous substances to which they are exposed. This information must include the nature of the hazards, appropriate work practices, protective measures, and emergency procedures. "Hazardous substance" means a chemical or substance or mixture of chemicals or substances which is defined as a hazardous substance under the federal Comprehensive Environmental ~~Responses~~ Response, Compensation, and Liability Act of 1980, as amended [Pub. L. 96-510; 94 Stat. 2767; 42 U.S.C. 9601 et seq.] and meets or exceeds the listed reportable quantity for that substance.

SECTION 42. REPEAL. Section 35-20-10 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 74

HOUSE BILL NO. 1331
(Representatives A. Olson, Myrdal)
(Senator Vosper)

EFFECTIVE DATE OF VARIOUS BILLS

AN ACT to create and enact section 14 to House Bill No. 1172, section 2 to House Bill No. 1321, section 2 to Senate Bill No. 2047, and section 2 to Senate Bill No. 2458, as approved by the fiftieth legislative assembly, to provide an effective date for those bills, relating to radio communication functions by the director of institutions and telecommunication functions by the office of central data processing, compensation and expenses for witnesses in criminal actions, investigations on Indian reservations by the attorney general, and court costs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 14 to House Bill No. 1172, as approved by the fiftieth legislative assembly, is hereby created and enacted to read as follows:

SECTION 14. EFFECTIVE DATE. Section 6 of this Act becomes effective on January 1, 1988.

SECTION 2. Section 2 to House Bill No. 1321, as approved by the fiftieth legislative assembly, is hereby created and enacted to read as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1988.

SECTION 3. Section 2 to Senate Bill No. 2047, as approved by the fiftieth legislative assembly, is hereby created and enacted to read as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1988.

SECTION 4. Section 2 to Senate Bill No. 2458, as approved by the fiftieth legislative assembly, is hereby created and enacted to read as follows:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1988.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 75

**HOUSE BILL NO. 1311
(Representative J. DeMers)
(Senator Holmberg)**

MARTIN LUTHER KING DAY

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to designation of the third Monday in January as Martin Luther King Day.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Martin Luther King Day. The third Monday of January of each year is designated as Martin Luther King Day in recognition of the life, legacy, and dream of Martin Luther King, Jr.

Approved March 13, 1987
Filed March 16, 1987

CHAPTER 76

SENATE BILL NO. 2070
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

GIFTS TO STATE OR SUBDIVISION

AN ACT to provide for a system for recording state property having historical or artistic significance and for reviewing the artistic value of such property; to create and enact a new subsection to section 54-54-05 of the North Dakota Century Code, relating to the duties of the state council on the arts; to amend and reenact sections 1-08-04, 48-11-03, and 55-01-04 of the North Dakota Century Code, relating to the authority of certain state entities to accept gifts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. State property having historical or artistic significance - Responsibilities of state historical board and council on the arts - Review and advice on property for exhibition. Except for the board of higher education and state institutions under the jurisdiction of the board, every state official or entity that, on behalf of the state, holds, acquires, or receives property having historical or artistic significance shall document and inventory that property on forms furnished by the state historical board. One copy of the completed form must be retained in the office of that official or entity and one copy must be filed with the state historical board. The information filed with the board must include a description of the property, the identity of the donor if acquired by gift, the date the property was acquired or received, any conditions on acceptance of the property if given by gift, and appropriate evidence of ownership. The information must also indicate whether the property is intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol. With respect to property intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol, the state historical board shall notify the state council on the arts. The council on the arts shall advise the capitol grounds planning commission with respect to permanent or long-term exhibition of such property on the capitol grounds. The council on the arts shall advise the capitol arts and historic preservation advisory committee with respect to permanent or

long-term exhibition of such property in public areas in the state capitol. Prior to transfer of ownership or other disposal of property documented and inventoried under this section, that property must be offered to the state historical board for inclusion in its historical collections.

SECTION 2. AMENDMENT. Section 1-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1-08-04. Authorizing state and counties, cities, and other municipalities to accept devises, bequests, legacies, and gifts. Devises, legacies, bequests, and gifts may be lawfully made to the state or any county, township, city, school district, or park district of the state of North Dakota. The title to any property, ~~real, personal, or mixed,~~ which shall be that is devised, bequeathed, or given to the state, or to any such county, township, city, school district, or park district, for the use and benefit thereof, ~~shall vest vests~~ in the state or such county, township, city, school district, or park district, to be by it held in trust under the terms and conditions provided for in ~~such the~~ devise, legacy, bequest, or gift. Unless otherwise authorized by the will or other instrument providing for ~~such the~~ devise, legacy, bequest, or gift, no part of ~~such the~~ property, nor of the income therefrom, shall may be diverted or used for any other purpose. The officers charged with the management of the fiscal affairs of the state, ~~or may only accept and receive a~~ devise, legacy, bequest, or gift that is consistent with the statutory responsibilities of the specific officer involved. The officers charged with the fiscal management of any county, township, city, school district, or park district, to whom may accept and receive any such devise, legacy, bequest, or gift is made, shall be authorized to accept, receive, and. The officer who accepts and receives the devise, legacy, bequest, or gift shall administer the same for and on behalf of the state, or any such county, township, city, school district, or park district.

SECTION 3. AMENDMENT. Section 48-11-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-11-03. Special operating fund - Acceptance of gifts - Continuing appropriation. A special operating fund for the capitol arts and historic preservation advisory committee must be maintained in the state treasury. The committee may accept any federal funds and any ~~other gifts and~~ money from any source that may be offered to the committee. All moneys received by the committee as gifts, donations, grants, or bequests, including all federal moneys, must be deposited in the special operating fund. All expenditures from the fund must be made on vouchers, approved and signed by the chairman or secretary of the committee and submitted to the office of management and budget for approval and payment. The committee may expend funds in the special operating fund, not to exceed ten thousand dollars per biennium, for improvements, furnishings, decorations, and fixtures in and ~~around~~ the state capitol and other state buildings, facilities, and properties. Other than gifts of

money, the committee may accept gifts of property only relating to the physical and aesthetic features of the interior of buildings on the capitol grounds.

SECTION 4. A new subsection to section 54-54-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

To determine the artistic value of property as provided by section 1 of this Act.

SECTION 5. AMENDMENT. Section 55-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-01-04. Acceptance of gifts, grants, devises, bequests, donations, and assignments - Deposited with the state treasurer - How expended. Whenever The state historical board may only receive and accept any grant, devise, bequest, donation, gift, or assignment of money, bonds, or choses in action, or of any property, real or personal, is made to the state historical board or either division under it, such for any purpose consistent with the statutory responsibilities of the board. The board shall must receive and accept the same, and the right and title thereto, in the name of the state. All moneys coming into the hands of the board as donations, gifts, grants, and bequests, unless by the terms of the donation, gift, grant, or bequest such the moneys are required to be maintained in another manner, shall must be maintained within the state treasury. All rent, interest, or income from land, money, or property received by the board by donation, gift, grant, or bequest, shall must also be maintained within the state treasury unless by the terms of their acquisition such the moneys are required to be maintained in a different manner. Such The moneys shall must be paid out for the purposes prescribed by the donor upon the approval of the state historical board by warrant-check prepared by the office of management and budget.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

AERONAUTICS

CHAPTER 77

HOUSE BILL NO. 1486
(Representative Hokana)
(Senators Richard, Dotzenrod)

AIRCRAFT REGISTRATION FEES

AN ACT to create and enact three new sections to chapter 2-05 of the North Dakota Century Code, relating to aircraft registration; and to amend and reenact section 2-05-11 of the North Dakota Century Code, relating to aircraft registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-05-11. Aircraft registration - Fees. Every The following procedures governing fees and registration apply:

1. Except as provided in section 4 of this Act, every aircraft or ultralight vehicle operating within this state for more than thirty days shall must be registered with the aeronautics commission for each year in which the aircraft or ultralight vehicle is operated within this state, subject to rules and regulations established adopted by the commission. The commission shall charge a fee for each such registration, and for each annual renewal thereof; the. The following fees apply:

Gross Weight in Pounds	Registration Fees	
	Effective January 17, 1984	Effective January 17, 1985
0 to 500	\$ 10-00	\$ 15-00
501 to 1,000	22-00	30-00
1,001 to 1,500	28-00	38-00
1,501 to 2,000	34-00	45-00
2,001 to 2,500	45-00	60-00
2,501 to 3,000	56-00	75-00
3,001 to 3,500	68-00	90-00
3,501 to 4,000	79-00	105-00
4,001 to 5,000	90-00	120-00
5,001 to 6,000	113-00	150-00

6,001 to 7,000	135.00	180.00
7,001 to 8,000	158.00	210.00
8,001 to 9,000	180.00	240.00
9,001 to 10,000	203.00	270.00
10,001 to 15,000	225.00	300.00
15,001 to 20,000	338.00	450.00
20,001 to 30,000	450.00	600.00
30,001 to 40,000	675.00	900.00
40,001 to 50,000	900.00	1,200.00
50,001 to 75,000	1,125.00	1,500.00
75,001 to 100,000	1,688.00	2,250.00
100,001 and over	2,250.00	3,000.00

<u>Gross Weight in Pounds</u>	<u>Registration Fees</u>
0 to 500	\$ 15.00
501 to 1,000	30.00
1,001 to 1,500	38.00
1,501 to 2,000	45.00
2,001 to 2,500	60.00
2,501 to 3,000	75.00
3,001 to 3,500	90.00
3,501 to 4,000	105.00
4,001 to 5,000	120.00
5,001 to 6,000	150.00
6,001 to 7,000	180.00
7,001 to 8,000	210.00
8,001 to 9,000	240.00
9,001 to 10,000	270.00
10,001 to 15,000	300.00
15,001 to 20,000	450.00
20,001 to 30,000	600.00
30,001 to 40,000	900.00
40,001 to 50,000	1,200.00
50,001 to 75,000	1,500.00
75,001 to 100,000	2,250.00
100,001 and over	3,000.00

Registration fees effective on January 17, 1984, are for calendar year 1984. Registration fees effective on January 17, 1985, are for calendar year 1985. The above fees are to must be reduced ten percent each year after the initial registration, or if the aircraft is one year old or older and being registered for the first time, the fees shall must be reduced ten percent for each year after the year of manufacture of the aircraft, until the fee reaches a figure equal to fifty percent of the original registration fee, which shall be is the fee each year thereafter.

2. All weights shall must be based upon the maximum permissible take-off weight, except that the weights shall must be empty weights for all ultralight vehicles which are not certificated for maximum permissible take-off weight.

3. The aeronautics commission may charge a reasonable cost of service fee for registration of aircraft operated by state agencies, political subdivisions, or the civil air patrol in lieu of the regular registration fee.
4. There is hereby created an aeronautics distribution fund within in the state treasury of the state of North Dakota. All fees received from the provisions of under this section shall be deposited in the aeronautics distribution fund. The fees must be distributed as follows:
 - a. Seventy-five percent of the fees so collected and deposited in the aeronautics distribution fund shall be distributed by the state treasurer on vouchers prepared by the commission to the treasurer of the county of the registrant's residence or, if the registrant is not a resident of North Dakota, then to the treasurer of the county in which is located the airport at which the registrant's aircraft or ultralight vehicle is based and the. The county treasurer shall pay such remittances over to the municipality or airport authority operating an airport within said the county, provided, that if. If there is more than one publicly owned or operated airport within said the county, that the said moneys shall must be prorated between said the public airports on the same ratio that the assessed value of each municipality with a public airport shall bear bears to the total assessed value of all municipalities with airports within said the county, and if. If there are no publicly owned or operated airports in said the county, said the remittances so paid to the county treasurer shall must be held and retained by said the treasurer in a separate fund to be used in the future for airport purposes.
 - b. The remaining twenty-five percent shall be transferred to the state general fund.

The distribution of the fees in the aeronautics fund as hereinbefore provided shall be accomplished at the end of each calendar year.

SECTION 2. A new section to chapter 2-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in sections 2 through 4 of this Act, unless the context otherwise requires:

1. "Antique aircraft" means an aircraft built and originally federally certified by its manufacturer before January 1, 1941.

2. "Classic aircraft" means an aircraft built and originally federally certified by its manufacturer after January 2, 1941, and before January 1, 1948.
3. "Warbird aircraft" means an aircraft built before January 1, 1948, expressly for the purpose of military service.

SECTION 3. A new section to chapter 2-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Permanent registration of certain older aircraft. On making proper application to the commission and paying the fee required under section 4 of this Act, the owner of an antique, classic, or warbird aircraft may permanently register that aircraft in accordance with this section. An aircraft so registered may be used only for display, airshow demonstration, testing, and maintenance, and preparation flights necessary to maintain flight safety of operations otherwise permitted under this section. An aircraft so registered cannot be used for conducting commercial or private aviation business. An aircraft entitled to a permanent registration may be transferred to a new owner under that permanent registration. The new owner is entitled to permanent registration as long as the owner qualifies in accordance with this section.

SECTION 4. A new section to chapter 2-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Fee for a permanent registration - Issuance of registration decal - Disposition of fee. The fee for a permanent registration under section 3 of this Act is eighty-five dollars. The commission shall prepare a distinctive decal denoting permanent registration under section 3 of this Act. That decal must be displayed in the aircraft in the same manner required for the registration decal otherwise issued under this chapter. Of the fee received for the registration, the commission may retain ten dollars for administering sections 2 through 4 of this Act and providing the distinctive decal required under this section. The rest of the fee must be deposited in the aeronautics distribution fund for distribution as provided by section 2-05-11.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 78

HOUSE BILL NO. 1117
(Committee on Political Subdivisions)
(At the request of the State Auditor)

AIRPORT AND LIBRARY FUNDS

AN ACT to amend and reenact section 2-06-14, subsection 2 of section 2-06-19, and subsection 2 of section 40-38-02 of the North Dakota Century Code, relating to the responsibility for maintaining airport authority and library funds and records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-06-14. Tax levy may be certified by airport authority or municipality. The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 2-06-10 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

SECTION 2. AMENDMENT. Subsection 2 of section 2-06-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by, revenues received by the municipality for airport purposes, be transferred, or paid directly to the, or credited to an airport authority as such funds become available to the municipality fund. The city auditor or county treasurer may establish and maintain the fund to account for airport authority revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the airport authority. On request of the city auditor or county treasurer and during an audit, the governing board of the airport authority shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the municipality at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of airport facilities;

SECTION 3. AMENDMENT. Subsection 2 of section 40-38-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The city auditor or county treasurer shall keep establish and maintain the fund separate and apart from the other money of the county or municipality to account for library revenues and promptly transmit all funds received pursuant to this section within thirty days of receipt to the board of directors shall make payments from the fund for invoices that have been submitted and approved by the governing body of the library. In the case of a contract with another library for service delivery, the city auditor or county treasurer shall promptly transmit all funds received to the established library fund of the agency delivering service. On request of the city auditor or county treasurer and during an audit, the governing board of the library shall supply its records. The records must be provided on a timely basis. The funds fund may not revert to or be considered funds on hand by the governing body of the city or county at the end of any fiscal year. The fund shall must be used exclusively for the establishment and maintenance of public library service.

Approved March 27, 1987

Filed March 30, 1987

AGRICULTURE

CHAPTER 79

SENATE BILL NO. 2116
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

DESTRUCTION OF UNDESIRABLE CREATURES

AN ACT to amend and reenact sections 4-01-17.1, 4-01-17.2, and 4-01-17.3 of the North Dakota Century Code, relating to the commissioner of agriculture's cooperation with federal agencies in the destruction of predatory animals, destructive birds, and injurious field rodents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-01-17.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-01-17.1. State to cooperate with federal bureau of sport fisheries and wildlife the animal and plant health inspection service and other agencies in destruction of predatory animals, destructive birds, and injurious field rodents. The commissioner of agriculture may cooperate with the United States department of the interior, bureau of sport fisheries and wildlife department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of: coyotes, wolves, bobcats, and foxes in this state that are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss. This control and destruction must be approved by the game and fish commissioner. The commissioner of agriculture may enter into written agreements with the bureau of sport fisheries and wildlife animal and plant health inspection service or other appropriate federal agency, and the game and fish commissioner covering the methods and procedures for the control and destruction of these birds and animals, the extent of supervision by either or both the commissioner of agriculture and the bureau of sport fisheries and wildlife animal and plant health inspection service or other appropriate federal agency, and the use and expenditure of the funds appropriated therefor by the legislative assembly. The commissioner of agriculture, in cooperation with the bureau of sport fisheries and wildlife animal and plant health inspection service or other appropriate federal agency, may enter into agreements with other governmental agencies and with counties,

associations, corporations, or individuals when such cooperation is deemed to be necessary to promote the control and destruction of these birds and animals.

SECTION 2. AMENDMENT. Section 4-01-17.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-01-17.2. Expenditures authorized - Who to approve vouchers - Qualifications of hunters and trappers hired - When bounties not payable. The commissioner of agriculture may make such expenditures from funds available for ~~such purpose for~~ equipment, supplies, and other expenses, including expenditures for personal services of hunters and trappers, as may be necessary to execute the functions imposed upon him by section 4-01-17.1. Hunters and trappers employed under section 4-01-17.1 shall be state residents, but shall not be entitled to bounty provided by state laws for the killing or extermination of these birds and animals. All vouchers for ~~such~~ expenditures made by the commissioner of agriculture under this section shall be approved as to correctness by the duly authorized agent of the bureau of sport fisheries and wildlife animal and plant health inspection service or other appropriate federal agency.

SECTION 3. AMENDMENT. Section 4-01-17.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-01-17.3. Disposition of proceeds of furs, skins, and specimens taken. All furs, skins, and specimens taken by hunters and trappers paid out of funds appropriated to carry out section 4-01-17.1 shall be disposed of in a manner the commissioner of agriculture ~~shall determine~~ determines is in the state's best interests. If ~~such~~ furs, skins, or specimens are sold, the net proceeds of ~~such~~ the sales shall be deposited with the state treasurer to be credited to the general fund.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 80

SENATE BILL NO. 2492
(Freborg)

COUNTY AGENT LEVIES

AN ACT to amend and reenact sections 4-08-15 and 4-08-15.1 of the North Dakota Century Code, relating to county mill levy limitations for county agent work.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-08-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-15. Tax levy - Appropriation from county general fund - Both authorized. The board of county commissioners of any county of this state in which a levy for county agent work has been voted on and approved by the people as provided for in sections 4-08-01 and 4-08-03 may levy not to exceed an amount necessary for such purpose, as provided in section 4-08-09, not exceeding the limitation in subsection 4 of section 57-15-06.7. The statutory mill levy limitation in effect during any biennium, and not the limitation in effect at the time of a county's vote for county agent work or the number of mills that may have been stated in the ballot for such a vote, is the applicable limitation. If it determines that the amount derived from the levy will not be sufficient for such purpose the board may appropriate additional funds out of the county general fund to cover the deficiency.

SECTION 2. AMENDMENT. Section 4-08-15.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-15.1. County agent work - Additional tax levy. The board of county commissioners of any county, upon passage of a resolution, may submit, at the next regularly scheduled or special election in the county, the question of providing for an additional annual levy not exceeding the limitation in subsection 5 of section 57-15-06.7 for county agent work. If the question submitted is approved by a majority of the electors voting thereon, the county commissioners shall proceed to make the levy. The number of mills approved by the

electors as an additional annual levy may not be increased by the board of county commissioners without voter approval of such increased levy as set out in this section, even if there is a subsequent increase in the mill levy limitation in subsection 5 of section 57-15-06.7. Upon approval of the levy for the county agent work, the board of county commissioners may expend the funds in the manner it deems best adapted to accomplish the purposes set forth by law. The levy may be discontinued upon the passage of a resolution by the board of county commissioners.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 81

HOUSE BILL NO. 1531
(Nowatzki, Kingsbury)

SEED EXPORT CERTIFICATION

AN ACT to create and enact two new subsections to section 4-09-01 and a new section to chapter 4-09 of the North Dakota Century Code, relating to export certification authority of the state seed commissioner; and to amend and reenact section 4-09-19 of the North Dakota Century Code, relating to authority of the state seed commissioner to enter into agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 4-09-01 of the North Dakota Century Code are hereby created and enacted to read as follows:

"Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.

"Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.

SECTION 2. A new section to chapter 4-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspection - Export certification - Fees. The commissioner or the commissioner's authorized representative may inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The commissioner may issue a phytosanitary certificate to plant quarantine officials and may make reasonable charges for this service. Certificates may be withheld if the product does not meet sanitary requirements and if all state licensing and bonding

requirements have not been met. The name and address of the consignee on the phytosanitary certificate is confidential.

SECTION 3. AMENDMENT. Section 4-09-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-19. Cooperation by commissioner with institutions, agencies, and organizations. The commissioner may cooperate and enter into agreements with the United States department of agriculture and with the state departments and agricultural colleges of any of the states, and with organized agricultural fairs or exhibitions, or other organizations or persons in matters relating to the protection, inspection, analysis, testing, registering, and certifying of North Dakota seed, and the promotion and protection of the interests and welfare of North Dakota seed growers and crop producers. The commissioner may recognize and deal with growers, organizations, and institutions as agencies affiliating with ~~him~~ the commissioner in pure seed matters.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 82

SENATE BILL NO. 2110
(Committee on Agriculture)
(At the request of the State Seed Department)

SEED LABELING AND TESTING

AN ACT to create and enact a new subsection to section 4-09-01 and a new subsection to section 4-09-10 of the North Dakota Century Code, relating to definitions of labeler and disease test; to amend and reenact subsections 6, 17, and 18 of section 4-09-01, subsection 1 of section 4-09-03, sections 4-09-05, 4-09-08, 4-09-14.1, 4-09-14.2, 4-09-14.3, 4-09-14.4, subsections 2, 3, and 5 of section 4-09-15, sections 4-09-22, 4-09-23, and 4-09-24 of the North Dakota Century Code, relating to rulemaking authority, free seed tests, seed labeling fee permits, reports, offenses, and enforcement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6, 17, and 18 of section 4-09-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Restricted noxious weed seeds" shall mean the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means. Included herein are the seeds of dodder (*cuscuta* species ~~except *eeryii*~~), wild mustard (~~*brassica spp*~~) (*sinapsis arvensis* syn. *brassica kaber*), frenchweed (*thlaspi arvense*), hedge bindweed (*convolvulus sepium*), wild oats (*avena fatua*), and quack grass (*agropyron repens* l. beauv.); provided, however, that the commissioner may, through promulgation of regulations, add to or delete from the list of seeds included under either classification in subsections 5 and 6 whenever he finds, after due consideration, that such additions or deletions are within the respective classifications;
17. "Germination" shall mean the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the ~~seed analysts association of~~

North America association of official seed analysts, but not including seed which produces weak, malformed, or obviously abnormal sprouts;

18. "Hard seed" shall mean the percentage of seed which, because of hardness or impermeability, do not absorb moisture or germinate under prescribed test but remain hard during the period prescribed for germination of the kind of seed concerned as determined by methods prescribed under the rules established by the seed analysts association of North America association of official seed analysts;

SECTION 2. A new subsection to section 4-09-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-22.1.

SECTION 3. AMENDMENT. Subsection 1 of section 4-09-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state seed commission shall be the governing board of the seed department and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this chapter section.

SECTION 4. AMENDMENT. Section 4-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-05. Rules and regulations - Authority to make. The commissioner, with the approval of the commission, from time to time shall adopt, publish, and amend uniform rules and regulations for carrying out the purposes and enforcing the provisions of this chapter and shall alter or suspend the rules and regulations from time to time as he finds necessary. The rules, regulations, definitions of terms, and conditions promulgated by the commissioner shall be approved by the attorney general as to form and legality, filed in the office of the commissioner, and published once in a newspaper of general circulation to be designated by the commissioner, in the city where the commissioner's main office is located. Thereafter, such rules, regulations, and definitions shall have the force and effect of law. An affidavit of publication setting forth the rules, regulations, definitions, or amendments thereto as published, shall be made by the publisher of the newspaper, his agent, or the newspaper manager, and shall be filed in the office of the commissioner. Such affidavits, or copies thereof certified by the commissioner, shall be prima facie evidence of the facts therein contained and of the due adoption and publication of the rules, regulations, definitions, or amendments may adopt rules in conformance with the provision of chapter 28-32.

SECTION 5. AMENDMENT. Section 4-09-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax, soybean, and edible bean seed to the commissioner for examination, analysis, or test, but not to exceed or germination tests. No more than three samples per year per person shall be examined and reported on free of charge. The commissioner, ~~however,~~ shall through promulgation of regulations prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 6. A new subsection to section 4-09-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A disease test result for seed borne diseases. For the purpose of this subsection the words "disease test result" have the meaning ascribed to them by regulations promulgated by the state seed commissioner.

SECTION 7. AMENDMENT. Section 4-09-14.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-14.1. Seed sales - Fee tags or stamps required Seed labeling fee permit - Exception. No person shall sell agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a fee tag or stamp seed labeling fee permit has been obtained from the seed department has been affixed to the seed container or a selling permit and has been issued to the seller pursuant to section 4-09-14.4.

SECTION 8. AMENDMENT. Section 4-09-14.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-14.2. Fee tags or stamps Seed labeling fee permit - Cost added to selling price. The fee tag or stamp required by section 4-09-14.1 shall be attached to the seed container in the prescribed denomination for the quantity of seed in the container. Fee tags or stamps shall be in the form prescribed by the commissioner and sold by the seed department at face value to seed vendors. The cost of fee tags or stamps attached to seed containers shall be added to the selling price of the seed by all wholesalers and processors. Seed sold by one wholesaler to another wholesaler need not be tagged or stamped. The labeler shall remit fees required by section 4-09-14.1 to the state seed department.

SECTION 9. AMENDMENT. Section 4-09-14.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-14.3. Fees. The denomination of a fee tag or stamp fees required by section 4-09-14.1 shall be attached to a seed container pursuant to the following fee schedule:

1. A container containing:

100 to 160 lbs. of seed	.....	eight cents
60 to 99 lbs. of seed	.....	seven cents
30 to 59 lbs. of seed	.....	six cents
15 to 29 lbs. of seed	.....	five cents
1/2 to 14 lbs. of seed	.....	four cents

2. Cereal grains, per 100 pounds [45.36 kilograms], two cents

Flax, soybeans, edible beans, per 100 pounds
[45.36 kilograms], four cents

3. Whenever seed is sold at wholesale or on consignment or commission in packets of eight ounces [226.80 grams] or less, ~~the lot container shall bear packet seed fee stamps. Each stamp the fee shall cost be fifty cents per twenty-five dollars of wholesale value, or fraction thereof, of the packets in the lot container. Each stamp shall be attached in such a manner that it will not be destroyed upon the opening of the lot container. Packet seed stamps shall be purchased by the packet seed packer from the seed department.~~

SECTION 10. AMENDMENT. Section 4-09-14.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-14.4. Permit --Issuance in lieu of fee tags or stamps. The commissioner is authorized at his discretion, under such rules as may be promulgated, to issue a permit to any person to sell agricultural, vegetable, flower, and tree and shrub seeds in North Dakota ~~without the use or attachment of fee tags or stamps purchased from the seed department.~~ The person shall apply to the commissioner for a permit and shall furnish the seed department with quarterly statements of all seeds sold in North Dakota. Each quarter statement shall be itemized to show the number of each class of containers referred to in section 4-09-14.3. Statements shall be furnished for each calendar quarterly period, shall be delivered to the commissioner not later than thirty days after the end of each quarterly period, and shall be accompanied by the appropriate fee. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner ~~shall~~ may require as part of the analysis tag label on all seed sold. The commissioner or his authorized agent shall have the right at all reasonable times to examine the records of any permitholder to verify the correctness

of its statements. The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually instead of quarterly.

SECTION 11. AMENDMENT. Subsections 2, 3, and 5 of section 4-09-15 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. ~~Seed or grain~~ Grain which is not intended for sowing purposes;
3. Seed stored by or consigned to a seed cleaning or ~~preprocessing conditioning~~ plant for the purpose of cleaning or ~~preprocessing conditioning~~; provided that any labeling or other representation which may be made with respect to uncleaned or ~~unprocessed unconditioned~~ seed shall be subject to the requirements of this chapter;
5. ~~Seeds which are sold or exchanged by farmers within any community who are not engaged in commercial seed business. A farmer who grows his own seed and sells only his own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together.~~

SECTION 12. AMENDMENT. Section 4-09-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-22. Prosecution for violations - Duty of attorney general and state's attorney. Upon a complaint by the commissioner, ~~after a hearing as provided in section 4-09-21,~~ alleging a violation of this chapter or of any regulation duly made thereunder, the attorney general, or the state's attorney of the county wherein the case arises, shall cause appropriate legal proceedings to be commenced and prosecuted for the enforcement of the penalties provided in this chapter. ~~No prosecution shall be instituted under this section unless the commissioner has held a hearing as provided in section 4-09-21.~~

SECTION 13. AMENDMENT. Section 4-09-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-23. Seizure and injunction - Action. Any lot of agricultural, flower, tree and shrub, or vegetable seed not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the commissioner, or his agent, to a court of competent jurisdiction in the locality in which the seed is located. In the event that the court finds the seed to be in violation of this chapter and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state. Provided, that in no instance shall the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed, or permission to process or relabel it in compliance with the provisions of this chapter. Any violation of

This chapter may be enjoined in a court of competent jurisdiction without bringing any other civil or criminal action.

SECTION 14. AMENDMENT. Section 4-09-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-24. Penalty - Criminal - Civil. Any person who violates any of the provisions, or who refuses to comply with any of the requirements of this chapter, or of any regulation duly made hereunder shall be guilty of an infraction:

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. A person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 83

HOUSE BILL NO. 1545
(Representatives Mydral, Starke)
(Senators Axtman, Bakewell)

STATE SEED COMMISSION MEMBERSHIP

AN ACT to amend and reenact subsection 2 of section 4-09-03 of the North Dakota Century Code, relating to the membership of the state seed commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 4-09-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The state seed commission, hereafter referred to as commission, shall be a seven-member board consisting of the president of the crop improvement association, the president of the certified potato growers association, ~~the vice president for agriculture, North Dakota state university of agriculture and applied science, the president a representative~~ of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, the highest elected officer of the red river valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the commissioner of agriculture, or the commissioner's designee, who shall serve as chairman. The dean of the school of agriculture of the North Dakota state university of agriculture and applied science is an advisory, nonvoting member of the commission.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 84

SENATE BILL NO. 2112
(Committee on Agriculture)
(At the request of the State Seed Department)

CERTIFIED SEED VARIETY PROTECTION

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to the sale of certified varieties of seed protected by the Plant Variety Protection Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended, [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq.] as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 85

HOUSE BILL NO. 1209
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

BEES

AN ACT to amend and reenact subsections 3 and 11 of section 4-12.2-01, sections 4-12.2-04.1 and 4-12.2-07, subsection 2 of section 4-12.2-09, subsection 4 of section 4-12.2-10, and section 4-12.2-12 of the North Dakota Century Code, relating to beekeeping; and to repeal subsection 17 of section 4-12.2-01 and subsection 2 of section 4-12.2-06 of the North Dakota Century Code, relating to definitions and fees for beekeeping.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 11 of section 4-12.2-01 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. "Bees" means any stage of the common honeybee, Apis Mellifera & honey producing insects of the genus Apis, including all life stages of such insects. The word "bees" as used in this chapter is not limited to the common honey bee but includes Africanized bees.
11. "Hobby operator" means any beekeeper who maintains twenty-three one hundred or fewer colonies of bees.

SECTION 2. AMENDMENT. Section 4-12.2-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-04.1. Application of minors for beekeepers license - Liability for minor. A beekeeper who is licensed either as a commercial operator or ~~sideline~~ hobby operator must be at least eighteen years of age. However, an applicant for a beekeepers license who is less than eighteen years of age may be licensed as a commercial operator or ~~sideline~~ hobby operator if the application for license is signed by either the mother, father, or guardian of the applicant. Any civil liability for violation of the beekeeping laws of this chapter by a beekeeper who is less than eighteen years of age must be imputed to

the person who has signed the application of that beekeeper for a license, which person is jointly and severally liable with the beekeeper.

SECTION 3. AMENDMENT. Section 4-12.2-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall ~~register~~ make application for registration of all apiaries which are under the beekeeper's control within the state. The application forms for registration shall be furnished by the department. The applicant shall provide the following information on the form provided:
 - a. The applicant's name, place of residence, and post-office address.
 - b. The location of each apiary, setting forth specifically the type of apiary, the location to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.
 - c. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.
 - d. Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.
2. New commercial apiaries may be submitted for registration with the department at any time.
3. Priority in time of application gives the superior right to occupy a location.
4. A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.

SECTION 4. AMENDMENT. Subsection 2 of section 4-12.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A ~~hobbyist or sideline beekeeper~~ hobby operator has territorial rights to one location. For purposes of this subsection, "territorial rights" means the right to exclusively occupy a location in the area within two miles [3.22 kilometers] of that location except that apiaries registered prior to a new yard with territorial rights may not be canceled. Apiaries established pursuant to sections 4-12.2-10, 4-12.2-11, and 4-12.2-12 are not subject to this subsection.

SECTION 5. AMENDMENT. Subsection 4 of section 4-12.2-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The department may refuse to register a pollination location if the ~~applicant's beekeeper's~~ bees and equipment have been found to not have at least a two-year disease free history.

SECTION 6. AMENDMENT. Section 4-12.2-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-12. Establishment of noncommercial locations. The two-mile [3.22-kilometer] radius restriction does not apply to a noncommercial apiary established by ~~either~~ a hobby ~~or sideline~~ operator. A commercial operator may not maintain a noncommercial apiary.

SECTION 7. REPEAL. Subsection 17 of section 4-12.2-01 and subsection 2 of section 4-12.2-06 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 86

HOUSE BILL NO. 1318
(Representative O. Hanson)
(Senator Bakewell)

ALFALFA LEAFCUTTER BEES

AN ACT to create and enact chapter 4-12.3 of the North Dakota Century Code, relating to the keeping of alfalfa leafcutter bees; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Chapter 4-12.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-12.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Bee" means any stage of the alfalfa leafcutter bee, *megachile rotundata (fabricius)*.
2. "Beekeeper" means any person who owns, leases, or manages alfalfa leafcutter bees for pollination or the production of alfalfa, either for personal or commercial use.
3. "Commissioner" means the commissioner of agriculture or the commissioner's authorized representative.
4. "Disease" means any disease, parasite, or pathogen that affects bees.
5. "Equipment" means grooved boards, shelters, trays, incubators, cell removers, tumblers, and other apparatus used in rearing bees.
6. "Nesting materials" means equipment, laminates, and other apparatus used in nesting bees.
7. "Wild trap" means to trap bees on property not owned or leased by the trapper.

4-12.3-02. Commissioner - Duties. The commissioner shall:

1. Adopt rules containing minimum standards for the presence of disease in bees to be certified, imported, possessed, or controlled in this state.
2. Prior to the adoption, amendment, or repeal of any rule shall consult with members of the alfalfa leafcutter bee industry.

4-12.3-03. Emergency orders and rules. Where an emergency exists requiring immediate action, the commissioner may, without notice or hearing:

1. Issue an order reciting the existence of the emergency and requiring that the necessary action be taken to meet the emergency; or
2. Adopt emergency rules which recite the existence of an emergency and provide a solution to the emergency.

An emergency order or emergency rule is effective immediately, but may not be effective for more than ninety days.

4-12.3-04. State alfalfa leafcutter bee inspector - Appointment - Qualifications. The commissioner shall appoint a person qualified by scientific training or practical experience as state alfalfa leafcutter bee inspector. The bee inspector shall be furnished with all supplies, equipment, and support necessary to carry out this chapter. The commissioner shall, on the recommendation of the inspector, appoint and dismiss deputy inspectors to assist the inspector in performing the inspector's duties.

4-12.3-05. Bee inspector - Duties - Powers.

1. The state bee inspector shall inspect bees, equipment, and nesting materials within this state as required by this chapter.
2. Any bees, equipment, and nesting materials may be inspected for the purpose of ascertaining the existence of any disease, for the treatment or destruction of such disease of bees, or for the purpose of enforcing this chapter.
3. The inspector or any deputy inspector may enter upon private property during reasonable hours for the purpose of inspection. Access may not be denied or hindered by any person while the inspector or the inspector's deputy is acting in an official capacity.
4. The beekeeper shall follow the instruction and supervision of the inspector or deputy inspector for the treatment, control, and eradication of any disease found in or on bees, equipment, buildings, or nesting materials.

5. If the beekeeper does not comply with the instructions given by the inspector or the deputy inspector, the inspector may cause the specified treatment to be applied or, if necessary, may cause the infected bees to be destroyed. A beekeeper may not recover damages or compensation for the loss of any diseased bees or equipment destroyed or damaged pursuant to this chapter or any rules adopted pursuant to this chapter.
6. After the inspection or handling of any diseased bees, equipment, building, or nesting materials, the inspector or deputy inspector shall take the measures necessary to prevent the spread of any bee disease.
7. Prior to the adoption, amendment, or repeal of any rule, the inspector or deputy inspector, shall consult with members of the alfalfa leafcutter bee industry.

4-12.3-06. Inspection and certification - Fees.

1. No person may import, possess, or control bees in this state unless the bees are certified annually under this section.
2. To certify bees, a person shall file a completed application form provided by the commissioner together with the certification and laboratory fees prescribed by the commissioner. The application must include the following:
 - a. Name and place of residence;
 - b. The locations of the shelters to the nearest quarter section and number of bees to be registered; and
 - c. Other necessary information prescribed by the commissioner.
3. After receipt of an application for certification, a sample of the total population of bees to be certified must be selected by the beekeeper, the inspector, or the deputy inspector in a manner prescribed by the commissioner. The sample must be inspected for disease. If no disease in excess of certification standards is found, the sample must be reported within certifiable limits.
4. When the commissioner receives a completed application form, the bees and equipment have been found to be within certifiable limits, and all fees and civil and criminal penalties have been paid, the commissioner shall issue a certificate for the bees. The certificate must state that the bees and equipment have been inspected, the date of

the inspection, and that they are apparently within certifiable limits.

5. The commissioner shall specify the date by which any applicant must apply for recertification the following year. An applicant for recertification who applies for recertification after the date specified must be assessed a penalty equal to ten percent of the certification fee.

4-12.3-07. Restrictions on importing bees and equipment.

1. Prior to the importation of any bee, the importer shall file a completed application form as required under section 4-12.3-04 and arrange with the commissioner a date and time for inspection.
2. Prior to certification, each bee, bee container, and all equipment used to transport the bees may be quarantined.
3. No bees may be imported except in loose cells or as adults. No bees may be imported in a drilled board, soda straw, or other equipment that prevents adequate inspection of the bee.
4. A representative sample of the population of bees imported must be inspected as the basis for certification.
5. No person may import used equipment or nesting materials.
6. No bee may be certified unless all other requirements of section 4-12.3-04 are met.

4-12.3-08. Restrictions on rearing, moving, and trapping bees.

1. No person may rear any bee in a drilled board, soda straw, or other nesting material from which samples of loose larval cells cannot readily be obtained.
2. No person may move any quarantined bee, equipment, or nesting material except by special permit issued by the commissioner.
3. No person may wild trap or attempt to wild trap bees unless that person has been issued a permit to wild trap in accordance with rules adopted by the commissioner.
4. The permits issued under subsections 2 and 3 must be issued under rules adopted by the commissioner. The commissioner shall adopt a schedule of fees for each permit.

4-12.3-09. Abandoned apiary and abandoned equipment - Seizure, destruction, or sale. Any bees, equipment, or nesting materials not regularly maintained and attended to in accordance with this chapter

or which comprise a hazard or threat to disease control in the beekeeping industry may be considered abandoned and will be subject to seizure by the state bee inspector. Any bees not properly maintained so as to prevent possible spread of disease may be considered abandoned. Any diseased bees, equipment, or nesting materials which have been seized may, when necessary, be immediately burned or otherwise destroyed and any bees, equipment, or nesting materials not destroyed may be sold at public auction. The proceeds, after the cost of sale are deducted, shall be returned to the former owner or the former owner's estate; provided, however, that before causing the bees, equipment, or nesting materials to be sold, the state bee inspector must give the beekeeper a written notice at least five days prior to the date on which the property will be sold. This notice is to be given by registered mail or by personal service upon the owner, or person in charge, of such property.

4-12.3-10. Penalties - Criminal - Civil - Certificate revocation or nonrenewal.

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. In addition to criminal sanctions that may be imposed pursuant to subsection 1, a person found guilty of violating this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing.
3. The commissioner may, in accordance with the laws of this state, maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a certificate to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of defraying the expenses of this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 87

HOUSE BILL NO. 1030
(Legislative Council)
(Interim Agriculture Committee)

STATE AND DISTRICT FORESTERS

AN ACT to create and enact a new section to chapter 4-19 of the North Dakota Century Code, relating to qualifications of district foresters; and to amend and reenact sections 4-19-01 and 57-57-01 of the North Dakota Century Code, relating to the appointment and duties of the state forester.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-19-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-19-01. State forester - ~~Who to be Appointment - Qualifications - Duties.~~ A member of the staff of the state school of forestry designated by the The board of higher education shall be appoint the state forester. He

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. The office of the state forester must be located in Bottineau.

2. The state forester shall have:

a. Have general supervision of the raising and distribution of seeds and forest tree planting stock as hereinafter provided; shall promote in this chapter.

b. Promote practical forestry, and compile and disseminate information relative thereto; and shall publish to practical forestry.

c. Publish the results of such work by issuing and distributing bulletins, lecturing before farmers' institutes and other organizations interested in forestry, and in such other ways as most practically will reach the public.

SECTION 2. A new section to chapter 4-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

District foresters - Qualifications. All district foresters under the supervision of the state forester must be graduates of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry.

SECTION 3. AMENDMENT. Section 57-57-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-57-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "State forester" means the president of the North Dakota school of forestry or his legally constituted successor, state forester appointed under section 4-19-01 and, where reasonable, the agents and personnel under his the state forester's control.
2. "Woodland" means an area of land normally supporting a growth of natural or planted forest cover.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 88

HOUSE BILL NO. 1111
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

NURSERIES

AN ACT to amend and reenact sections 4-21.1-01, 4-21.1-02, 4-21.1-03, 4-21.1-04, 4-21.1-05, 4-21.1-06, 4-21.1-11, 4-21.1-12, 4-21.1-13, 4-21.1-14, and 4-21.1-16 of the North Dakota Century Code, relating to inspection, certification, and licensing of nurseries and nursery stock; and to repeal sections 4-21.1-07, 4-21.1-08, 4-21.1-09, 4-21.1-10, 4-21.1-15, and 4-21.1-17 of the North Dakota Century Code, relating to nursery stock dealers and agents licenses, special inspections, late filing of license applications and the deposit of funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-21.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-01. Definitions. The following terms as used in In this chapter, except where the context or subject matter otherwise requires, shall include both the singular and the plural and shall be construed to mean:

1. "Commissioner" means the commissioner of the department of agriculture of this state or any designated representative to whom authority to act in his stead has been or hereafter may be delegated.
2. "Pest" means any insect, disease, or other organism of any character, causing or capable of causing injury to nursery stock. Alternate hosts of crop diseases shall be construed as being included.
3. "Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.

4. "Nursery stock" means all plants and plant parts capable of propagation or growth, except field, vegetable, and flower seed.
 5. "Certificate" means a document issued or authorized by the commissioner indicating that nursery stock is not contaminated with a pest.
 6. "Nursery" means any place where nursery stock is propagated or grown for sale or distribution.
 7. "Nurseryman" means any person who owns, leases, manages, or is in charge of a nursery.
 8. "Dealer" means any person, not a grower of nursery stock, who obtains nursery stock for the purpose of sale or distribution.
 9. "Person" means any individual, corporation, company, society, association, government agency, or other entity.
 10. "Agent" means any person who solicits orders for nursery stock under the control of a nurseryman, dealer, or other agent.
 11. "Place of business" means each separate location from which nursery stock is being distributed or offered for sale.
 12. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.
- "Certificate of inspection" means a document issued or authorized by the commissioner stating that nursery stock is practically free from damaging pests.
2. "Commissioner" means the commissioner of agriculture or the commissioner's authorized representative.
 3. "Grower" means any person who takes a reproductive part of nursery stock and increases its size and development for at least one full growing season. This includes a person producing nursery stock from tissue culture.
 4. "Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.
 5. "Non-hardy" means plant species, varieties and cultivars that will not survive climatic conditions in North Dakota.

6. "Nursery" means any place where nursery stock is propagated, grown or offered for sale.
7. "Nursery stock" means all trees, shrubs, and woody vines and parts thereof which are capable of propagation or growth; except seed. Only those plants that are intended for outdoor planting are considered nursery stock.
8. "Person" means any individual, corporation, company, society, association, government agency, or other entity.
9. "Pest" means any invertebrate animal, pathogen, parasitic plant or other similar organism which can cause damage to nursery stock.
10. "Place of business" means each separate location from which nursery stock is being offered for sale.
11. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit or special use.

SECTION 2. AMENDMENT. Section 4-21.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-02. Administration rules, and regulations - Rulemaking authority. The commissioner shall have the responsibility for administration of the provisions of this chapter. The commissioner shall appoint a state entomologist and is authorized to assign functions provided for in this chapter to any unit of his department or designated representative and to delegate any authority provided for in this chapter, to be exercised under the commissioner's general supervision. The commissioner shall promulgate may adopt such rules and regulations as are necessary for the efficient execution of the provisions of this chapter pursuant to chapter 28-32 as are necessary to carry out the purposes and provisions of this chapter.

SECTION 3. AMENDMENT. Section 4-21.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-03. Authority for inspection. To effectuate the purposes of this chapter, the The commissioner shall inspect all nurseries nursery stock being grown in North Dakota at least once each year and may enter and inspect any nursery or place of business, or step and inspect, in a reasonable manner, any nursery stock in transit within the state during normal business hours.

SECTION 4. AMENDMENT. Section 4-21.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-04. Authority for abatement - Removal from sale. Whenever the The commissioner finds nursery stock that is not viable, not certified, or is infested with a pest, or finds that a pest exists

in any nursery or place of business, or is in transit on any nursery stock in this state, he may, upon giving notice to the owner or his the owner's agent in possession, seize, condemn, destroy, treat, or remove from sale, or otherwise dispose of the pest or nursery stock at the owner's expense in a manner the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of a pest, any nursery stock offered for sale that is found to be not viable, not accompanied by a certificate of inspection, not labeled correctly, or infested with a pest.

SECTION 5. AMENDMENT. Section 4-21.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-05. Certification of nursery stock. A certificate of inspection may be issued annually by the commissioner for nursery stock grown in licensed nurseries within North Dakota that is found to be practically free from damaging pests and is found to have otherwise complied with the provisions of this chapter. Certificates shall expire December thirty-first unless canceled at an earlier date. Special or temporary certificates may be issued to persons requesting special inspection. Certification may be withheld when nursery stock is infested with a pest or if weeds or other objects prevent the commissioner from making an adequate inspection of the nursery stock. All nursery stock purchased, being offered for sale, or distributed within the state North Dakota shall be from officially inspected sources. A copy of a certificate of inspection from the state of origin shall accompany each commercial lot or shipment of nursery stock that is sold transported into or distributed within the state offered for sale within North Dakota. If the shipment requires a federal inspection certificate or tag, it must also be attached. All reproductions of the North Dakota certificate of inspection needed for shipping purposes, other than an actual copy of the original certificate, must be approved by the commissioner.

SECTION 6. AMENDMENT. Section 4-21.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-06. Nursery license - Fee. No person shall be engaged as a nurseryman sell nursery stock without a license from issued by the commissioner. Licenses shall expire December thirty-first unless revoked at an earlier date. Application An application for renewal of license and requests for inspection with any information requested by the commissioner shall be submitted and accompanied by a fee of ten fifty dollars on or before December thirty-first each year. A nursery may serve as a dealer under a nursery license. A separate license is required for each place of business. The fee for each additional license, other than the principal place of business, is ten dollars. No license may be issued to a grower unless the grower has been issued a certificate of inspection.

SECTION 7. AMENDMENT. Section 4-21.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-11. Labeling and standards for nursery stock. No person shall sell, or offer for sale, or distribute any nursery stock not securely labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as designated by the commissioner, must be labeled with the statement "nonhardy in North Dakota". All nursery stock offered for sale or distribution shall be in a viable condition and shall be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.

SECTION 8. AMENDMENT. Section 4-21.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-12. Misrepresentation. It is unlawful for any person to misrepresent the name, age, origin, grade, variety, quality, or hardiness of any nursery stock being offered for sale or distribution, or to misrepresent by name or otherwise that he is a nurseryman or conducts a nursery business when such is not the case.

SECTION 9. AMENDMENT. Section 4-21.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-13. Reciprocal agreements. The commissioner may enter into reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates. Nursery stock owned by persons from such states may be sold or delivered in this state without a license or fee if like privileges are accorded to persons from this state. Any nonresident nurseryman or dealer, having a place of business in this state, shall obtain a license and pay the fees required as a dealer.

SECTION 10. AMENDMENT. Section 4-21.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-14. Exemptions. The commissioner may exempt certain nursery stock, nurseries, dealers, or persons dealing in the sale of annual vegetable and floral plants from all or part of the sections of this chapter. Exemptions from licenses and fees include:

1. Persons growing and propagating nursery stock for research or experimental purposes.
2. Soil conservation districts selling nursery stock for the prevention of soil and wind erosion or other conservation plantings.
3. Persons growing nursery stock for noncommercial purposes or that the commissioner designates as exempt.

SECTION 11. AMENDMENT. Section 4-21.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-21.1-16. Penalties - Criminal - Civil - License Revocation or Nonrenewal.

1. Any person violating any of the provisions of who violates this chapter shall be deemed or any rules adopted pursuant to it is guilty of a class A B misdemeanor.
2. Any person who violates any of the provisions of this chapter, or rules adopted pursuant to it is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The department may, in accordance with the laws of this state, maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.

SECTION 12. REPEAL. Sections 4-21.1-07, 4-21.1-08, 4-21.1-09, 4-21.1-10, 4-21.1-15, and 4-21.1-17 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 89

SENATE BILL NO. 2398
(Senator Hilken)
(Representative Schindler)

SOIL CONSERVATION DISTRICT SUPERVISORS

AN ACT to amend and reenact section 4-22-22 of the North Dakota Century Code, relating to compensation of soil conservation district supervisors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-22-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-22. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses. At the general election to be held in 1972, three district supervisors shall be elected. The candidate receiving the largest number of votes shall be elected for a six-year term; the candidate receiving the second highest number of votes shall be elected for a four-year term; and the candidate receiving the third highest number of votes shall be elected for a two-year term. At each succeeding general election, one supervisor shall be elected for a term of six years, or until ~~his~~ the successor is duly elected and qualified, to each expiring or vacant term. In newly formed districts, three supervisors shall be elected at the first general election following the district's organization. The candidate receiving the largest number of votes shall be elected for a six-year term; the candidate receiving the second highest number of votes shall be elected for a four-year term; and the candidate receiving the third highest number of votes shall be elected for a two-year term. At each succeeding general election, one supervisor shall be elected for a term of six years, or until ~~his~~ the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state within fifteen days following any general election a certified abstract of the votes cast in ~~his~~ the county at such election for each candidate for district supervisor. At the time that the county auditor transmits the certified abstract of the votes cast for each candidate, ~~he~~ the county auditor shall file with the secretary of state a certificate showing the name and address of each candidate.

In order to be eligible for election to the office of supervisor, candidates must be land occupiers and physically living in the district. Candidates shall be elected on a nonpartisan ballot. In case the office of any supervisor shall, for any reason, become vacant, the remaining members of the board of supervisors shall, with the advice and consent of the state committee, fill the vacancy by appointment. ~~In the event that~~ If vacancies ~~shall~~ occur in the office of two supervisors, the remaining supervisor and the state committee shall fill the vacancy; and in case the offices of all supervisors of a district ~~shall~~ become vacant, the state committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy shall hold office until the next general election. A supervisor elected to fill a vacancy shall serve the balance of the unexpired term in which the vacancy occurred.

Any soil conservation district, upon resolution of the three elected supervisors, may appoint two additional supervisors who shall serve for a term of one year from and after the date of their appointment. Such supervisors shall be appointed by a majority of the three elected supervisors and shall have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors shall be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.

Any supervisor of a soil conservation district may, after notice given and hearing held in accordance with chapter 28-32, be removed from office by the state committee.

The supervisors of soil conservation districts shall be entitled to receive no, upon a majority vote of the supervisors, twenty-five dollars for attending each regular or special meeting as compensation for their services other than. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings approved by the state soil conservation committee, which expenses shall be paid from appropriations available to the state committee. All The compensation and all other expenses including travel incurred by district supervisors while transacting district business and not specifically authorized by the state soil conservation committee shall be paid from district funds.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 90

SENATE BILL NO. 2111
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

PLANT PEST CONTROL

AN ACT to amend and reenact sections 4-33-01, 4-33-02, and 4-33-12 of the North Dakota Century Code, relating to control of plant pests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-33-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-33-01. Definitions. ~~The following terms as used in In this chapter, except where unless the context or subject matter otherwise requires, shall include both the singular and the plural and shall be construed, respectively, to mean:~~

1. "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.
2. "Commissioner" means the commissioner of the department of agriculture of North Dakota or any designated representative to whom authority to act in his stead has been or hereafter may be delegated the commissioner's authorized representative.
3. "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
4. "Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.
5. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

6. "Permit" means a document issued or authorized by the commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.
7. "Person" means any individual, corporation, company, society, or association, or other business entity.
8. "Pest" means any insect, disease, or other organism of any character whatsoever, causing or capable of causing, directly or indirectly, injury or invertebrate animal, pathogen, parasitic plant, or similar organism which can cause damage to any plants a plant or parts part thereof or any processed, manufactured, or other products product of plants or any other pest that the commissioner may designate as detrimental to agriculture.
9. "Phytosanitary certificate" means an international document issued or authorized by the commissioner stating that a plant or plant product is considered free from quarantine pests and practically free from injurious pests and that they are considered to conform with the current phytosanitary regulations of the importing country.
10. "Plant" means agronomic field crops, horticultural crops, and native and tame grasses used for livestock production.
11. "Regulated article" means any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

SECTION 2. AMENDMENT. Section 4-33-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-33-02. Administration - Rules and regulations Rulemaking authority - State agricultural entomologist. The commissioner shall have the responsibility for administration of the provisions of this chapter. The commissioner is authorized to assign functions provided for in this chapter to any unit of his department and to delegate any authority provided for in this chapter to any designated representative, to be exercised under his general supervision shall employ a qualified entomologist to serve as state agricultural entomologist and to carry out the survey, control, and quarantine provisions of this chapter. The individual must be a graduate in agricultural entomology from an accredited college or university and must be stationed in Bismarck. The commissioner shall promulgate may adopt such rules and regulations as are necessary for the efficient execution of the provisions of this chapter under chapter 28-32 as are necessary to carry out the purposes and provisions of this chapter.

SECTION 3. AMENDMENT. Section 4-33-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-33-12. Authority for domestic and export certification. The commissioner may inspect ~~domestic fruits, vegetables, seeds, nursery stock, and other plants~~ any plant and plant products product, when offered for export or shipment from within the state and to certify to shippers and interested parties as to the freedom of such products from injurious ~~diseases and~~ pests according to the sanitary requirements of other states and foreign countries, ~~and to.~~ Authority for inspection and certification under this section is not limited to plants defined in section 4-33-01. The commissioner may make such reasonable charges and to use such any means as may be necessary to accomplish this objective. Certificates A certificate may be withheld or not issued if the product does not meet sanitary or import requirements and if all state North Dakota licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.

Approved February 2, 1987
Filed February 3, 1987

CHAPTER 91

HOUSE BILL NO. 1425
 (Representatives O. Hanson, Tokach, Tomac)
 (Senators W. Meyer, Moore)

BEEF PROMOTION ASSESSMENTS

AN ACT to amend and reenact sections 4-34-01, 4-34-02, 4-34-08, 4-34-09, 4-34-10, and 4-34-11 of the North Dakota Century Code, relating to beef promotion; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-34-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-01. Purposes. The purposes of this chapter are:

1. To provide and participate in programs to increase the consumption of domestic beef through such means as advertising ~~and local and national~~, research, consumer information, industry information, sales promotion, and education, but at no time shall false or unwarranted claims be made on behalf of the beef industry.
2. To support research and educational activities of the national livestock and meat board and its beef industry council with not less than fifty percent of the assessments collected.
3. To initiate, encourage, and sponsor research designed to solve problems in the beef production, primarily in, but not limited to, animal health and human nutrition industry.
4. To enhance the sale and production of North Dakota beef cattle.
- 5- ~~To promote the production of North Dakota beef cattle and undertake in-state promotion and administration under this chapter with no more than twenty-five percent of the assessments collected.~~

SECTION 2. AMENDMENT. Section 4-34-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-02. Definitions. Unless the context otherwise requires:

1. "Beef producer" shall mean any person or firm engaged in the production of cattle.
2. "Cattle" shall be defined to include both beef and dairy cattle means live domesticated bovine animals regardless of age.
3. "Cattle feeder" shall mean any person or firm engaged in the growing of cattle or finishing of cattle for slaughter.
4. "Commission" shall mean the North Dakota beef commission.
5. "Dairy producer" shall mean any person or firm engaged in the production and sale of milk from cows.
6. "Livestock auction markets" shall have the same definition as contained in subsection 2 of section 36-05-01.
7. "Local brand inspector" shall mean a person appointed and authorized by the North Dakota Stockmen's Association acting as agent for the North Dakota livestock sanitary board.
8. "Livestock dealer" shall have the same definition as contained in section 36-04-01.
- 9- 8. "Livestock terminal markets" shall mean the public livestock market located at West Fargo and known as the West Fargo stockyards.
- 10- 9. "Person" shall include individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units.
- 11- 10. "Selling agency" shall mean any person engaged in the business of buying or selling in commerce livestock on a commission basis.

SECTION 3. AMENDMENT. Section 4-34-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-08. Assessment for sale of cattle. There is hereby levied on each person who is a resident of this state selling cattle within the state or from the state, an assessment of fifty cents per head for each animal sold. For the purposes of this chapter, a person is not considered to have sold cattle if the person's only share in the proceeds of a sale of cattle is a sales commission, handling fee, or

other service fee, or the person acquired ownership of cattle to facilitate the transfer of ownership of the cattle from the seller to a third party, resold the cattle no later than ten days from the date on which the person acquired ownership, and certified, as required by regulations prescribed by the cattlemen's beef promotion and research board and approved by the secretary of agriculture of the United States, that the requirements of 7 CFR 1260.116 have been satisfied. The moneys collected pursuant to this chapter shall be paid to the commission pursuant to this chapter and shall be expended by the commission only as authorized by this chapter.

SECTION 4. AMENDMENT. Section 4-34-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-09. Manner of deductions - Payments of assessments to beef commission - Collections by brand inspectors. The assessments provided in this chapter shall be collected by selling agencies at livestock terminal markets, livestock auction markets, and by all livestock dealers licensed by the state of North Dakota by deducting such assessments from any credit given or payment made to the person selling the cattle at the time such credit is given or payment is made. Persons who sell cattle from the state of North Dakota outside of the state or to an out-of-state buyer shall remit the assessments directly to the commission within thirty days of such sale, unless such the assessment has been paid to a brand inspector or a qualified state beef council in another state. Any other person selling cattle within the state shall remit the assessments directly to the commission.

In order to facilitate the collection of assessments on cattle sold to buyers other than at terminal markets and auction markets, local brand inspectors may serve as collectors for the commission at the time of inspection of the cattle, provided that a satisfactory receipt evidencing such payment is given. The brand inspectors shall immediately notify the commission if any person refuses to pay any assessment required of him.

SECTION 5. AMENDMENT. Section 4-34-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-10. Remittance of assessments collected - Penalties. All assessments collected by licensed dealers, selling agencies at terminal markets, or auction markets, or local brand inspectors required to be paid by any other person as provided in this chapter shall be remitted to the North Dakota beef commission within thirty days following the month during which the assessments were received no later than the fifteenth day of the month following the month in which the cattle were sold. The assessments shall be accompanied by remittance forms as prescribed and furnished by the commission. All moneys collected by the commission pursuant to this chapter shall be remitted by the commission to the state treasurer and deposited by him the state treasurer in the North Dakota beef commission fund and are hereby appropriated to the commission and shall be disbursed by the commission in accordance with the provisions of this chapter.

Any licensed dealer, selling agency at terminal markets, auction markets, or any local brand inspector who collects other person required to remit assessments but who fails to remit the same within sixty days after the time provided in this section shall be assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any licensed dealer, or any owner or operator of a livestock selling agency at a terminal market, or any livestock auction market operator failing or any other person required to collect assessments as provided in this chapter shall be but who fails to collect assessments as required by this chapter is guilty of a class B misdemeanor. Any person who sells cattle from the state of North Dakota outside the state or to an out-of-state buyer who willfully fails to remit the assessments required by this chapter within sixty thirty days as required by this chapter shall be following the month in which the cattle were sold is guilty of a class B misdemeanor. Assessments unpaid on the date on which they are due and payable shall be increased by a ten percent nonrefundable penalty on the amount of the assessments and the commission is authorized to sue for and collect the same. Any unpaid assessments due pursuant to this chapter must be increased by two percent each month beginning with the day following the date the assessments were due. Any remaining amount due which includes any unpaid charges previously due pursuant to this section, must be increased at the same rate on the corresponding day of each month thereafter until paid. The timeliness of the remittance of an assessment as required by this chapter must be based on the applicable postmark date or the date the assessment is actually received by the commission. The commission is authorized to sue for and collect assessments and any penalties on unpaid assessments.

SECTION 6. AMENDMENT. Section 4-34-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-34-11. Refund of assessments. Any person who has made payment of assessments under the provisions of this chapter or who has had payment of assessments made on his that person's behalf of such assessments may request and receive a refund, provided that a written request and application for such the refund is made within six months after the remittance of such assessments sixty days from the date the assessments were due. Applications for refunds shall be made by the seller himself in such form as shall be reasonably required by the commission, and shall provide the commission with sufficient information to identify such assessments.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act is effective until the North Dakota beef commission certifies to the secretary of state that the national referendum held pursuant to the Beef Promotion and Research Act of 1985 [99 Stat. 1597; 7 U.S.C. 2901 et seq.] to establish a national beef promotion and research order has not been approved. If the referedum is not approved, the beef commission shall certify that fact to the secretary of state within thirty days after the results of the referendum are declared final.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 92

SENATE BILL NO. 2162
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

PESTICIDE APPLICATION AND LICENSING

AN ACT to amend and reenact section 4-35-09, subsection 3 of section 4-35-14, and sections 4-35-15 and 4-35-18 of the North Dakota Century Code, relating to licensing for pesticide applicators, reimbursement of the cost of materials for pesticide act training materials, and application of nonregistered pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-09. Commercial applicator's license. No person who would be a commercial applicator if certified shall purchase, use, or supervise the use of a restricted use pesticide without a commercial applicator's license issued by a county treasurer, unless exempted by this chapter, and without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued which is to be paid to the county treasurer, who shall deposit the fee in the county general fund. The license shall expire on December thirty-first of each year. If the county cooperative extension agent service, or its designee, finds the applicant qualified to apply pesticides in the classifications he has applied for after examination as the board shall require by regulation, and the applicant meets all other requirements of this chapter, the county treasurer of the appropriate county shall issue a commercial applicator's license limited to the classifications the applicant is qualified in. If certification is not to be issued as applied for, the county cooperative extension agent service, or its designee, shall inform the applicant in writing of the reasons therefor. Individuals licensed pursuant to this section shall be deemed certified commercial applicators for the use of restricted use pesticides.

SECTION 2. AMENDMENT. Subsection 3 of section 4-35-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The board shall determine by regulation methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly. The county cooperative extension agent service, or its designee, in the county of the residence of the applicant shall issue a certificate, without fee, to any private applicator who has qualified as prescribed by the board. However, the cooperative extension service, or its designee, may require any applicant required to be licensed or certified under this chapter to pay a reasonable charge, not greater than the cost to the cooperative extension service, for materials provided to the applicant for training and education.

SECTION 3. AMENDMENT. Section 4-35-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a license or certification. The commissioner may, after opportunity for a hearing, deny, suspend, revoke, or modify any provision of any license or certification issued under this chapter, if he the commissioner finds that the applicant or the holder of a license or certification has committed any of the following acts, each of which enumerated in this section. Each of the following acts is declared to be a violation of this chapter, whether committed by an applicant, holder of a license or certification, or any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification₇.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board₇.
3. Applied materials known by him to be ineffective or improper₇.
4. Operated faulty or unsafe equipment₇.
5. Operated in a faulty, careless, or negligent manner₇.
6. Neglected, or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the commissioner₇.

7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;_
8. Made false or fraudulent records, invoices, or reports;_
9. Operated unlicensed equipment in violation of section 4-35-17;_
10. Used fraud or misrepresentation in making an application for, or for renewal of, a license or certification;_
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or certification;_
12. Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed his license or certification to be used by another person;_
13. Knowingly made false statements during or after an inspection concerning any infestation of pests found on the land;_
14. Impersonated any federal, state, county, or city inspector or official;_
15. Distributed any restricted use pesticide to any person who is required by law or regulations promulgated under such law to be certified to use or purchase such restricted use pesticide unless such person or his agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide; ~~or.~~_
16. Bought, used, or supervised the use of any restricted use pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted therefrom.
17. Applied any economic poison which is not registered pursuant to the provisions of chapter 19-18.

SECTION 4. AMENDMENT. Section 4-35-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-18. Reciprocal agreement. The board The cooperative extension service, or its designee, may establish a procedure to issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted-use pesticides under a plan substantially similar to this chapter. Such a certification may be suspended or revoked in the same manner and on the same grounds as licenses and certifications pursuant to this chapter, and shall be suspended or revoked if the nonresident's home state certification is suspended or revoked.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 93

HOUSE BILL NO. 1207
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

CHEMIGATION REGULATION

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to chemigation regulation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new chapter to title 4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an on the farm irrigation system.
2. "Commissioner" means the commissioner of agriculture.
3. "Fertilizer" means any commercial fertilizer as defined by subsection 3 of section 19-20.1-02.
4. "Pesticide" means that term as defined by subsection 19 of section 4-35-05.
5. "State engineer" means the state engineer appointed by the state water commission under section 61-03-01.

Statement of compliance. For the purposes of this chapter, farm irrigation systems used for chemigation which are designed, constructed, and operated as specified in the administrative rules adopted under this chapter so as to minimize the possibility of ground or surface water contamination, are considered to be in compliance with this chapter.

Rules - Standards for application through irrigation system, installation, maintenance, and modifications. The commissioner of agriculture shall adopt rules regulating chemigation through irrigation systems in this state to minimize the possibility of chemical, pesticide,

fertilizer, or other contamination of irrigation water supply and other rules as necessary to implement this chapter. The commissioner may establish by rule standards for application of pesticides and fertilizers through irrigation systems; for installation and maintenance of all equipment and devices used for chemigation purposes; for modifications or changes in design, technology, irrigation practices; or for other purposes relating to the use or placement of equipment or devices. The commissioner may adopt rules requiring periodic calibration and inspection of equipment and system operation during periods of chemigation.

Inspections. The state engineer shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The state engineer shall inform the commissioner of any violation of this chapter that is discovered in the course of the state engineer's regular inspections of irrigation systems using chemigation.

Enforcement.

1. The commissioner shall enforce this chapter and any rules adopted under this chapter.
2. The commissioner may seek an injunction in the district court in the county in which the violation occurs or may issue a cease and desist order to any person for any alleged violation of this chapter or any rules adopted under this chapter.
3. For the purpose of carrying out the provisions of this chapter, the commissioner and the state engineer may enter upon any public or private premises at reasonable times in order to:
 - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
 - b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or animals.
 - e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
 - f. Observe the use and application of a pesticide or fertilizer through chemigation.

- g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or for use.

Penalties.

1. Any person who violates the provisions of this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter or any rules adopted under this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found to have violated the provisions of this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing under chapter 28-32.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 94

SENATE BILL NO. 2511
(Senators Dotzenrod, Nelson)
(Representatives Shockman, Nowatzki)

ORGANIC FOODS

AN ACT to provide for standards and compliance requirements for organic foods.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Legislative intent. It is the intent of the legislative assembly to recognize a public benefit in establishing standards and compliance requirements for food products marketed and labeled using the term or a derivative of the term organic food. These standards are intended to protect the public and facilitate the development of national and international markets for food grown by organic methods in this state.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Organic food" means any food product including meat, dairy, or a beverage, that is marketed or sold using the term or a derivative of the term organic food in the labeling or advertising of the product.
2. "Pesticides" means synthetic herbicides, insecticides, and fungicides, and all other toxic materials. The term does not include material from naturally derived substances.
3. "Synthetic fertilizer" means all nitrogen sources derived from ammonia; phosphorus derived from the acid treatment of rock phosphates; refined or highly soluble potassium salts, whether manufactured or mined; and all other chemically refined, synthesized, or acid treated material.
4. "Vendor" means any person who sells organic food to a consumer or another vendor, or who processes, manufactures, or otherwise transforms an organic food on behalf of a seller of organic food.

5. "Verification" means a system maintained by the vendor of organic foods that demonstrates compliance to standards under which product identity may be traced from farm to consumer, using a series of documents that record information about the vendor's production and processing techniques, including records documenting inspection visits by the vendor or the vendor's designee, records documenting inventory, and records documenting adherence to standards.

SECTION 3. Production standards. The minimum standards qualifying a product to be labeled as an organic food require that:

1. The product was grown or raised, or is composed of ingredients that were grown or raised, without the use of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, arsenicals or other synthetic products. However, treated seed may be used if untreated seed is not available.
2. The soil on which an organic food is grown or raised must have been free of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, and arsenicals for a minimum of three years prior to the harvest of the organic food.
3. No synthetic products were used in the storage, processing, or manufacturing process.

SECTION 4. Compliance. Any vendor using the term organic food on the label of any product shall:

1. Use only raw materials in the product which conform to the standards in section 3 of this Act.
2. Have sufficient verification to ensure that all products labeled as organic foods are in compliance with the standards in section 3 of this Act.
3. Utilize verification guidelines and detail standards on file with the commissioner of agriculture.

Approved March 20, 1987
Filed March 23, 1987

ALCOHOLIC BEVERAGES

CHAPTER 95

HOUSE BILL NO. 1474
(Representative O'Shea)
(Senator Krauter)

DRAM SHOP LAW RECOVERY

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to a cause of action for fault or negligence resulting from intoxication; to amend and reenact section 5-01-09 of the North Dakota Century Code, relating to the unlawful delivery of alcoholic beverages; to repeal section 5-01-06 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1571 is not approved by the fiftieth legislative assembly or does not become effective, a new section to chapter 5-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claim for relief for negligence resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for negligence under section 9-10-07 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives; nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

SECTION 2. If House Bill No. 1571, as approved by the fiftieth legislative assembly, becomes effective, a new section to chapter 5-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claim for relief for fault resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for fault under section 2 of House Bill No. 1571 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives; nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

SECTION 3. If House Bill No. 1571, as approved by the fiftieth legislative assembly, becomes effective and subsequently terminates by its own provisions, a new section to chapter 5-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claim for relief for negligence resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for negligence under section 9-10-07 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives; nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

* SECTION 4. AMENDMENT. Section 5-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-09. Delivery to certain persons unlawful. Any person knowingly delivering alcoholic beverages to a person under twenty-one years of age, ~~an~~ a habitual drunkard, an incompetent, or an obviously intoxicated person is guilty of a class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1, and 5-01-08.2.

** SECTION 5. REPEAL. Section 5-01-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 6. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 1993.

Approved April 9, 1987

Filed April 9, 1987

* NOTE: Section 5-01-09 was also amended by section 1 of House Bill No. 1072, chapter 99.

** NOTE: Section 5-01-06 was also repealed by section 2 of House Bill No. 1072, chapter 99.

CHAPTER 96

HOUSE BILL NO. 1551
(C. Williams)**TOWNSHIP BEER OR LIQUOR LICENSES**

AN ACT to amend and reenact section 5-01-07 of the North Dakota Century Code, relating to township beer or liquor licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-07. Township beer or liquor licenses. No retail beer or liquor license shall be issued in any organized township without the written consent of the board of township supervisors. ~~Every third renewal of such license shall be reviewed and subject to approval by the board of township supervisors.~~

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 97

HOUSE BILL NO. 1533
(Representatives Hill, Scherber, Rydell)
(Senators W. Meyer, Wright)

ILLEGAL POSSESSION OF ALCOHOL

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, relating to minors in possession of certain alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-08. Persons under twenty-one years of age prohibited from entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor ~~and shall, if a fine is imposed, be fined not less than three hundred dollars.~~ The court may, under this section, refer the person to an outpatient addiction facility licensed by the department of health for evaluation and appropriate counseling or treatment.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 98

HOUSE BILL NO. 1457
(Haugen)

MISREPRESENTATION OF AGE FOR ALCOHOL

AN ACT to amend and reenact sections 5-01-08.1 and 5-01-08.2 of the North Dakota Century Code, relating to misrepresentation of age by minors purchasing alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-08.1. ~~Misrepresentation of age - Penalty - Obligations of licensee Licensee may keep book.~~ Any person who shall ~~misrepresent misrepresents or misstate his age~~ misstates that person's age or the age of any other person, or shall ~~misrepresent who misrepresents~~ misrepresents his age through presentation of any document purporting to show ~~such~~ that person to be of legal age to purchase alcoholic beverages shall ~~be~~ is guilty of a class B misdemeanor. ~~Every Any licensee shall be required to may keep a book which such licensee and his employees shall and may require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign such the book if the age of such that person is in question. Such The book shall must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and his the purchaser's signature.~~

SECTION 2. AMENDMENT. Section 5-01-08.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-08.2. ~~Presumption of licensee's innocence when certain facts established.~~ The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age shall ~~constitute~~ constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented ~~in writing,~~ and supported with other documentary proof, that he was of legal age to purchase alcoholic beverages.

2. That the appearance of ~~such~~ the purchaser was such that an ordinary and prudent person would believe ~~him~~ the purchaser to be of legal age to purchase alcoholic beverages.
3. That the sale was made in good faith and in reliance upon the ~~written~~ representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 99

HOUSE BILL NO. 1072
(Wald)

ILLEGAL DELIVERY OF ALCOHOL

AN ACT to amend and reenact section 5-01-09 of the North Dakota Century Code, relating to the unlawful delivery of alcoholic beverages; and to repeal section 5-01-06 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 5-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-09. Delivery to certain persons unlawful. Any person knowingly delivering alcoholic beverages to a person under twenty-one years of age, an habitual drunkard, an incompetent, or an obviously intoxicated person is guilty of a class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1, and 5-01-08.2.

** SECTION 2. REPEAL. Section 5-01-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 9, 1987
Filed April 9, 1987

* NOTE: Section 5-01-09 was also amended by section 4 of House Bill No. 1474, chapter 95.

** NOTE: Section 5-01-06 was also repealed by section 5 of House Bill No. 1474, chapter 95.

CHAPTER 100

SENATE BILL NO. 2380
(Holmberg)

SUNDAY BEER AND WINE SALES

AN ACT to create and enact a new section to chapter 5-02 of the North Dakota Century Code, relating to the sale on Sunday of beer and wine by eating establishments in conjunction with the sale of prepared meals; and to amend and reenact section 5-02-05 and subsection 37 of section 12.1-30-03 of the North Dakota Century Code, relating to the sale or consumption of alcoholic beverages on certain days and businesses authorized to operate on Sunday.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Local approval of Sunday beer and wine sales by eating establishments - Fee. The local governing body may provide in any on sale liquor or beer license the right of an eating establishment to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of twelve noon and nine p.m. for consumption only in that part of the eating establishment habitually used for the serving of prepared meals. As used in this section, "eating establishment" means a restaurant or other commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this chapter, and which derives fifty percent or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Where this provision is made in an on sale license, the governing body may require the licensee to pay an additional annual fee of not more than one hundred fifty dollars.

SECTION 2. AMENDMENT. Section 5-02-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05. Disposal prohibited on certain days - Penalty. Except as permitted by ~~section~~ sections 5-02-05.1 and 1 of this Act, any person who dispenses or permits the consumption of alcoholic

beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Good Friday, Thanksgiving Day, Christmas Day, or after six p.m. on Christmas Eve, or between the hours of one a.m. and eight p.m. on the day of any statewide special, primary, or general election is guilty of a class A misdemeanor.

SECTION 3. AMENDMENT. Subsection 37 of section 12.1-30-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in sections 5-02-05 and, 5-02-05.1, and 1 of this Act.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 101

SENATE BILL NO. 2549
(Holmberg)
(Approved by the Committee on Delayed Bills)

TRADE ZONE ALCOHOL TAXATION

AN ACT to amend and reenact sections 5-03-01 and 5-03-04 of the North Dakota Century Code, relating to sale and taxation of alcoholic beverages for export from foreign trade zones.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-03-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-03-01. State wholesale license required - Qualifications - Penalty. Before any person ~~shall engage~~ engages in the sale at wholesale of beer or liquor in this state ~~he, that person~~ shall first procure a license from only the state treasurer. ~~Such~~ That license ~~shall~~ must only allow sale to licensed retailers, licensed wholesalers ~~and~~, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. ~~Applicant, other than corporate,~~ If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of the this state of North Dakota and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises shall be a resident of the this state of North Dakota, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state treasurer may require the applicant to set forth ~~such~~ other information as ~~is~~ necessary to enable ~~him~~ the

state treasurer to determine if a license should be granted.

3. ~~No~~ A person shall be ~~is not~~ eligible for such a license unless ~~he~~ that person has a warehouse and office in this state, in which is kept a complete set of records relative to ~~his~~ that person's alcoholic beverage transactions in ~~North Dakota~~ this state.

Any person distributing alcoholic beverages in this state without compliance with the provisions of this title is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 5-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-03-04. Collection of taxes. The taxes imposed by this chapter ~~shall be paid by~~ are payable as follows:

1. Except as provided in subsection 3, wholesalers shall pay the tax to the state treasurer on or before the fifteenth day of each month.
2. Liquor wholesalers shall make ~~such~~ the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make ~~such~~ the payments based on the total gallonage purchased from brewers the preceding calendar month. ~~Sales of beer of an alcoholic content of not more than 3.2 percent by weight to military exchanges shall be excluded from the computation of gallonage tax due from wholesalers.~~
3. Sales of alcoholic beverages for export through a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse are excluded from the computation of the gallonage tax. If the alcoholic beverages are returned to this state from the federally bonded warehouse, the foreign trade zone, or the export bonded warehouse, the exemption no longer applies.
4. Upon satisfactory proof, a tax credit ~~shall be~~ is allowed beer wholesalers for beer purchased, but which ~~cannot be~~ sold in ~~North Dakota~~ this state. A tax credit ~~shall be~~ is allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax ~~shall be~~ is again ~~paid~~ payable on any accounts subsequently collected.
5. If any wholesaler makes an overpayment of taxes due, the state treasurer shall issue a credit applicable to future obligations or certify ~~such~~ that amount to the office of management and budget for a refund.
6. Any remittance within one dollar of the correct amount due may be accepted by the state treasurer as the correct amount due.

Approved April 7, 1987
Filed April 9, 1987

BANKS AND BANKING

CHAPTER 102

SENATE BILL NO. 2134
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CEASE AND DESIST ORDER APPEALS

AN ACT to amend and reenact subsection 4 of section 6-01-04.2 of the North Dakota Century Code, relating to the appeal of cease and desist orders served upon financial corporations or institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-01-04.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation or institution, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation or institution. An emergency, temporary cease and desist order shall be effective immediately upon service on the financial corporation or institution and shall remain in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. Within ten days of the emergency, temporary cease and desist order a financial corporation or institution may appeal the entry of an emergency, temporary cease and desist order to the district court for the county in which the financial corporation or institution has located its main office. The financial corporation upon which such an order is served may apply to the district court of the county in which the financial corporation or institution is located for an order enjoining the operation of the emergency, temporary order. The application for injunction and procedure upon application must comply with the requirements of section 6-07-14.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 103

HOUSE BILL NO. 1042
(Legislative Council)
(Interim Industry and Business Committee)

BANK CAPITAL STOCK REQUIREMENTS

AN ACT to amend and reenact section 6-02-03 of the North Dakota Century Code, relating to the capital stock requirements of banking associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-02-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-02-03. Capital stock, surplus, and federal deposit insurance requirements. The capital stock of any banking association organized after June 30, 1987, shall be not less than fifty one hundred thousand dollars. In addition to such capital requirements there shall be subscribed and paid in at the time of organization a surplus of not less than twenty-five fifty thousand dollars. The state banking board may require such additional capital, surplus, and undivided profits as it may determine necessary to properly serve the area and to protect the public interest. All of the capital stock and surplus of every association shall be paid in before it shall be authorized to commence business, and evidence of such payment either in actual money or a deposit in a previously approved correspondent bank must be furnished to the commissioner before the certificate of authority may be delivered to it. A banking association shall, ~~after July 1, 1978~~, secure federal deposit insurance corporation insurance of deposits before it is authorized to commence business. Evidence of securing such insurance must be furnished to the commissioner before the certificate of authority may be delivered to the banking association.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 104

SENATE BILL NO. 2427
(Redlin)

BANK SECURITIES DEALINGS

AN ACT to create and enact a new subsection to section 6-03-02 of the North Dakota Century Code, relating to the power of banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-03-02 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To enter into the business of dealing in securities and stock for the purpose of purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of individual and institutional customers and to provide portfolio investment advisory, management, information, forecasting, and research services to such customers in combination with or separate from such purchases and sales.

Approved April 7, 1987

Filed April 9, 1987

CHAPTER 105

HOUSE BILL NO. 1652
(Representatives Koland, Skjerven)
(Senator Reiten)

MERGED BANKS

AN ACT to create and enact a new section to chapter 6-03, a new section to chapter 57-35, and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to maintaining houses, offices, and services of merged banks and to taxation of merged banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of facilities of merged banks. Notwithstanding the provisions of sections 6-03-13.1 through 6-03-13.4 and section 6-03-14, two or more banking institutions, or national banks that are subsidiaries as defined in the Bank Holding Company Act of 1956, as amended, [ch. 240; 70 Stat. 133; 12 U.S.C. 1841] of the same bank holding company, which consolidate or merge in accordance with section 6-03-11 or in accordance with procedures applicable to national banks may, upon completion of the consolidation or merger retain, operate, establish, and maintain the banking houses or offices of the merged or consolidated entities, including off-premises banking facilities, and provide other services or functions as would be permitted had the consolidation or merger not occurred.

SECTION 2. A new section to chapter 57-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Imposition of tax after merger or consolidation. Any banking institution or national bank that enters a consolidation or merger with one or more other such institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred.

SECTION 3. A new section to chapter 57-35.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Payment of taxes after merger or consolidation. Any banking institution or national bank that enters a consolidation or merger with one or more other such institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred.

Approved April 6, 1987
Filed April 6, 1987

CHAPTER 106

SENATE BILL NO. 2227
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK DIVIDENDS

AN ACT to amend and reenact sections 6-03-34 and 6-03-36 of the North Dakota Century Code, relating to the payment of dividends by a banking institution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-34. Surplus fund required - Dividends only out of earnings not required for surplus. The board of directors of any association organized under this title may declare and pay annual ~~or~~, semiannual, or quarterly dividends out of the net profits of the association subject to the limitations of this ~~section~~ chapter. Every such association, quarterly, semiannually, or annually, as its board of directors shall deem advisable, shall ascertain, set apart, and convert into a surplus fund at least fifty percent of its net earnings until such surplus fund shall equal one hundred percent of its common stock, and no dividend shall be declared upon its stock except from the remaining fifty percent of its net earnings.

SECTION 2. AMENDMENT. Section 6-03-36 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions.

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.
2. No dividend may be paid in an amount which exceeds the total of the association's net profits for the year combined with its retained net profits for the preceding two years less any required transfers to surplus or a fund for the retirement of any preferred stock, capital notes,

or debentures, without the approval of the state banking board. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:

- a. An association's retained net profits for the period beginning January one of the year for which the proposed dividends are declared and ending as of the date used to determine shareholders of record; plus
 - b. The association's retained net profits for the preceding two calendar years; less
 - c. Any required transfers to:
 - (1) Surplus;
 - (2) Funds for the retirement of preferred stock, capital notes, and debentures.
3. For the purpose of this section, "net profits" means the remainder of all earnings from the association's current annual operations plus actual recoveries of past losses on loans, investments, and other assets, after deducting from the total, all current operating expenses, actual losses, accrued dividends on preferred stock, if any, accrued interest on capital notes and debentures, and all federal and state taxes.
4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the state banking board.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 107

HOUSE BILL NO. 1137
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK INVESTMENTS — CREDIT UNION INVESTMENTS

AN ACT to create and enact section 6-03-47.3 and subdivision g of subsection 5 of section 6-06-06 of the North Dakota Century Code, relating to bank investments in investment company shares and powers of credit unions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 6-03-47.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-03-47.3. Bank investment in investment company shares. Financial institutions under the jurisdiction of the state banking board may invest in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permitted under this chapter. The state banking board may issue rules and regulations governing investments by North Dakota financial institutions in shares of registered investment companies.

SECTION 2. Subdivision g to subsection 5 of section 6-06-06 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

- g. Subject to rules of the state credit union board, in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permissible under this section.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 108

HOUSE BILL NO. 1041
(Legislative Council)
(Interim Industry and Business Committee)

INSOLVENT BANK CLAIM PRIORITY

AN ACT to create and enact a new section to chapter 6-07 of the North Dakota Century Code, relating to the priority of paying expenses of and claims against an insolvent bank; and to amend and reenact sections 6-03-67 and 41-04-27 of the North Dakota Century Code, relating to liability of a banking association for appropriation of deposits and the right of payor banks to setoff.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-67. Appropriation of deposits unlawful - Exception - Liability therefor. Except as provided in ~~section~~ sections 2 of this Act and 30.1-31-13, it ~~shall be~~ is unlawful for any banking association to charge any claim which it might have, or the claim of any other person, against a deposit made with the association, or to appropriate a deposit or any part thereof of the deposit to the payment of any debt to ~~such the~~ association, without legal process or the consent of the depositor. Any banking association which violates this section ~~shall be~~ is liable to the party aggrieved for any damages caused by ~~such the~~ violation.

SECTION 2. A new section to chapter 6-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Priority of expenses and claims. The order of paying the expenses of and claims against an insolvent bank is:

1. Administrative expenses, including salaries and expenses of receivers pursuant to section 6-07-20, and expenses incurred by the commissioner during possession or in the course of proceedings under this chapter including the compensation of deputy examiners, agents, and clerks employed by the commissioner and reasonable fees for

- counsel, accountants, or consultants employed by the commissioner or on the commissioner's behalf;
2. Unsecured claims for wages, salaries, or commissions earned by an individual within ninety days before the date of the commissioner's possession in an amount not exceeding five thousand dollars for each individual;
 3. Claims of depositors, except that notwithstanding sections 6-03-67 and 41-04-27, if a depositor is indebted to an insolvent bank, the insolvent bank has a right to setoff against the depositor's account;
 4. All other unsecured claims and claims of secured creditors to the extent the amount of their claims exceeds the present fair market value of their collateral;
 5. Claims for debts that are subordinated under the provisions of a subordination agreement or other instrument; and
 6. Equity capital of shareholders.

SECTION 3. AMENDMENT. Section 41-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-04-27. (4-303) When items subject to notice, stop order, legal process, or setoff - Order in which items may be charged or certified - Exception.

1. Any knowledge, notice, or stop order received by, legal process served upon, or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:
 - a. Accepted or certified the item.
 - b. Paid the item in cash.
 - c. Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule, or agreement.
 - d. Completed the process of posting the item to the indicated account of the drawer, maker, or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item.

- e. Become accountable for the amount of the item under subdivision d of subsection 1 of section 41-04-23 and section 41-04-26 dealing with the payor bank's responsibility for late return of items.
2. Subject to the provisions of subsection 1, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order convenient to the bank.
3. This section does not apply to the setoff provided in section 2 of this Act.

Approved April 1, 1987

Filed April 2, 1987

CHAPTER 109

SENATE BILL NO. 2133
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FINANCIAL INSTITUTION CALL REPORTS

AN ACT to amend and reenact section 6-03-70 of the North Dakota Century Code, relating to financial institutions call reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-70 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-70. Reports - Regular and special - Publication - Penalty. Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which shall be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports shall exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which shall be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the commissioner within thirty days after receipt of the request for the same. Each report, in a form prescribed by the commissioner, shall be published, at the expense of the association, in some newspaper in the city where such bank is located, and in case there is no such newspaper, then in a legal newspaper of the county in which such association is located. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 110

SENATE BILL NO. 2383
(Nething, Langley)

TRUST COMPANY DIRECTORS

AN ACT to amend and reenact section 6-05-06 of the North Dakota Century Code, relating to the number of directors and qualifications of trust companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 6-05-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-06. Directors - Qualifications - Terms - Vacancies. All the corporate powers of such a corporation shall be exercised by a board of directors of not less than ~~nine~~ three nor more than ~~fifteen~~ twenty-five in number, and such officers and agents as it shall elect or appoint. A majority of the directors must be citizens of this state, and every director must own in his own right, free from hypothecation or pledge for any debt, at least ten shares of capital stock of the corporation of which he is a director, which said shares shall be known as "director's qualifying shares" and which shall be so marked across the face and retained in the trust company, as provided in section 6-03-03. Any director who ceases to be the owner of ten shares of stock, free and nonhypothecated, or who becomes in any manner disqualified, shall vacate his office thereupon. Every director, when elected or appointed, shall take the oath specified in section 6-03-04. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, shall be transmitted at once to the commissioner to be filed in his office. The articles of incorporation must state the names and residences of the first board of directors, of whom the first named one-third shall serve for a period of three years, the second one-third named for a period of two years, and the balance thereof shall serve for a period of one year from the date fixed for the commencement of such corporation. In case any of the persons so named shall ~~not become stockholders to the amount required to qualify, or if they fail or refuse to qualify from any cause,~~ the directors who shall qualify must elect qualified ~~stockholders persons~~ to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors shall be elected to serve three years in place of those whose terms then shall expire.

Approved April 7, 1987
Filed April 9, 1987

* NOTE: Section 6-05-06 was also amended by section 1 of House Bill No. 1050, chapter 73.

CHAPTER 111

HOUSE BILL NO. 1138
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

TRUST COMPANY EXAMINATIONS

AN ACT to amend and reenact section 6-05-28, subsection 2 of section 6-08-08.1, and section 6-10-06 of the North Dakota Century Code, relating to examination fees and examinations of annuity, deposit, surety, and trust companies, notification on applications to the commissioner of banking and financial institutions, and examinations of agents for deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-05-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-28. Examination by commissioner - Fees - Power over business, officers, and employees. The commissioner shall make a full, true, complete, and accurate examination and investigation of the affairs of each corporation doing business under this chapter ~~once in each eighteen months, or more often if required to do so by a verified information in writing filed with the commissioner by any person interested in any trust with which any such corporation may be charged as often as the commissioner deems necessary.~~ Such examination shall be made without previous notice to the corporation to be examined. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of one hundred ~~thirty-five~~ dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for. The commissioner, in the commissioner's discretion, may accept, in lieu of any examination authorized or required by this title to be conducted by the department of banking and financial institutions, the examination that may have been made of such institution within a reasonable period by the federal reserve bank, if a copy of such examination is furnished to the commissioner. The commissioner

shall assume and exercise over each such corporation and its business, officers, directors, and employees all the power and authority conferred upon the commissioner over banking and other financial or moneyed corporations or associations.

SECTION 2. AMENDMENT. Subsection 2 of section 6-08-08.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Within ~~thirty ten~~ business days after the date of mailing the notification the commissioner shall determine if the application as filed is complete and notify the applicant by mail of the determination. If the commissioner determines the application is incomplete the commissioner will, within the ten business days, request additional information deemed necessary to complete the application. Within ten business days after the receipt of the additional information, the commissioner will notify the applicant by mail of the commissioner's determination of completeness. Within thirty days after the mailing of a notice of completeness by the commissioner, the transaction shall be deemed approved, unless the board issues an order calling a hearing. If a hearing is called by the board, the parties to the transaction shall be given at least a ten-day written notice of the time, date, and place of the hearing, to be held before the board, to examine into the following matters:
 - a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers.
 - b. Whether the qualifications of management include adequate experience with financial institutions or other approved related experience.
 - c. Whether the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.

The determination to call a hearing may be made by the commissioner after consulting the board members and an order calling a hearing may be issued by the board without a formal meeting.

SECTION 3. AMENDMENT. Section 6-10-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-10-06. Duty of commissioner. The commissioner shall ~~may~~ make an examination of the business of such licensee ~~at least once in each year~~, and such applicant shall pay an examination fee to the state treasurer. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of ~~sixty-five~~ one hundred thirty-five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 112

HOUSE BILL NO. 1423
(Representatives Oban, Gates)
(Senator Hilken)

CREDIT UNION POWERS

AN ACT to create and enact a new subsection to section 6-06-06 of the North Dakota Century Code, relating to the powers of credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-06-06 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 113

HOUSE BILL NO. 1218
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CREDIT UNION ASSESSMENTS

AN ACT to amend and reenact subsection 4 of section 6-06-08 of the North Dakota Century Code, relating to assessments of state credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-06-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4. The credit union shall, within thirty days from date of billing, pay to the state treasury for examination a fee as provided in the following schedule-

Total Assets on Day of Examination	Fee
\$0 to \$ 300,000	\$ 300
over \$ 300,000	\$ 300 plus .00075 x excess over \$ 300,000
over \$ 500,000	\$ 450 plus .00030 x excess over \$ 500,000
over \$ 1,000,000	\$ 600 plus .00020 x excess over \$ 1,000,000
over \$ 5,000,000	\$1,400 plus .00016 x excess over \$ 5,000,000
over \$ 10,000,000	\$2,200 plus .00012 x excess over \$ 10,000,000
over \$ 20,000,000	\$3,400 plus .00009 x excess over \$ 20,000,000
over \$ 30,000,000	\$4,300 plus .00007 x excess over \$ 30,000,000
over \$ 40,000,000	\$5,000 plus .00006 x excess over \$ 40,000,000
over \$ 50,000,000	\$5,600 plus .00005 x excess over \$ 50,000,000

The minimum fee for the examination of a credit union shall be three hundred dollars and the maximum fee shall be ten thousand dollars. Every state credit union placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay into the state treasury the following yearly assessment: one and one-half hundredths of one percent of gross amount of the assets of the corporation or association on June thirtieth of each year, exclusive of expenses, interest, and taxes paid, and inclusive of

any valuation allowance or allowances deducted by the credit union from any asset account. The fee may not be less than three hundred dollars and not more than seven thousand five hundred dollars. The assessment must be paid to the state treasurer within thirty days of each June thirtieth, except that those credit unions whose examination has begun within the six months immediately prior to July 1, 1987, do not have to pay the first yearly assessment. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the state credit union board, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due, plus a penalty of five dollars a day additional for the delay. The examination fee for North Dakota central credit union shall be one hundred thirty-five dollars per examiner day for the time used by the commissioner or other person or persons designated by the commissioner in making and otherwise preparing and typing the reports of examination. If any such credit union shall be delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent credit union until payment of the amount due, plus a penalty of two hundred dollars for the delay.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 114

HOUSE BILL NO. 1139
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FAILING CREDIT UNION ACTION

AN ACT to create and enact section 6-06-08.2 of the North Dakota Century Code, relating to emergency action concerning a failing institution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 6-06-08.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-06-08.2. Failing institution - Emergency powers - Hearing - Order - Appeal. Whenever the state credit union board determines that a merger or acquisition of any of the credit unions under its supervision is necessary because the institution's equity is impaired, it is conducting its business in an unsafe, unsound, or unauthorized manner, or it is endangering the interests of shareholders, creditors or the public, whether or not the institution is insolvent, the state credit union board may, without a hearing, declare an emergency and declare that the institution is a failing institution. Upon such declaration the state credit union board may authorize the commissioner of banking and financial institutions to immediately take possession of the institution. The board is authorized to do all things necessary to continue service to the affected community including any merger or acquisition under this chapter or otherwise.

An institution which is the subject of such a board declaration may ask for a hearing before the state credit union board within five days after service of the state credit union board's declaration upon it. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of the county in which the credit union is located within ten days after the order is served upon it. The appeal is governed by chapter 28-32 except that the board has ten days after service of the notice of appeal to certify the record, and the district court shall hear the appeal as expeditiously as possible.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 115

HOUSE BILL NO. 1232
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CREDIT UNION LOANS

AN ACT to amend and reenact section 6-06-12 of the North Dakota Century Code, relating to credit union directors, duties, powers, and loan limitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-12. Directors - Duties and powers - Loan limitations. The directors shall have general management of the credit union, and it shall be their duty particularly:

1. To act on applications for membership, unless a membership officer is appointed.
2. To determine interest rates on loans and deposits.
3. To fix, subject to the approval of the state examiner commissioner, the amount of surety bond which shall be required of all officers and employees handling money.
4. To declare dividends.
5. To transmit to the members recommendations for changes in the bylaws.
6. To fill vacancies on the board of directors and on the credit committee who shall serve until their successors are chosen and qualified.
7. To determine the maximum individual shareholdings and the maximum individual loans which can be made, aggregate liability to the credit union of any one borrower but the such maximum loan aggregate liability allowed by the board

shall not exceed the amounts listed in the following schedule:

Total assets	Loan limit
0 to 70,000	10% with a limit of 5,000
70,001 to 100,000	6,000 limit
100,001 to 200,000	8,000 limit
200,001 to 300,000	10,000 limit
300,001 to 400,000	12,000 limit
400,001 to 500,000	14,000 limit
over 500,000	3% of assets

For purposes of this subsection, the aggregate liability of one borrower to a credit union includes the total direct, indirect, and contingent liabilities of the borrower, and the liabilities of separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The aggregate liability of any one borrower to the credit union does not include any loan or portion of a loan guaranteed by the government, to the extent of the guarantee, nor any loan secured by shares in the credit union, to the extent of the security.

In all cases a credit union shall be allowed to loan up to and including two hundred dollars to any individual regardless of the amount of total assets in said credit union. Provided, that the foregoing provisions shall not apply to the North Dakota central credit union.

8. To supervise and control investments other than loans to members.
9. To establish a schedule of fines for delinquency in the payment of principal or interest, which the board shall impose at its discretion.
10. The board may appoint membership officers authorized to approve applications for membership under such conditions as the board may prescribe; except that such membership officers so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.

Approved March 12, 1987
 Filed March 16, 1987

CHAPTER 116

HOUSE BILL NO. 1422
(Representatives Oban, Larson)
(Senator Heinrich)

CREDIT UNION LOANS

AN ACT to amend and reenact section 6-06-14 of the North Dakota Century Code, relating to loans by credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee shall have general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings shall not apply to the North Dakota central credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan shall be made on a form approved by the committee and shall set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum ~~loan~~ aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security shall be two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed ~~ten~~ twenty-five thousand dollars. Security under this section shall include an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan shall be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers, ~~and delegate to him or them~~ the power to approve loans up to the limit established by the credit committee, or in excess of such limit if such excess is fully secured by unpledged shares. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by ~~him~~ the loan officer within seven days of the date of the filing of the application therefor. All loans not approved by a loan officer shall be acted

upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by ~~him~~ that individual in ~~his~~ that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members shall be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and shall be in strict conformity with the credit union's rules and regulations.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 117

HOUSE BILL NO. 1409
(Opedahl, Gates)

BORROWING FROM CREDIT UNIONS

AN ACT to amend and reenact section 6-06-20 of the North Dakota Century Code, relating to borrowings by officers, directors, and committee members of credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-20. Borrowings of ~~officers~~ directors and committee members limited - Repayment of loans. No director, ~~officer~~, or member of any committee may borrow from the credit union in which ~~he~~ the director or member holds office more than two thousand five hundred dollars plus pledged shares and deposits less any loan balance therein, unless ~~his~~ the application is approved by three-fourths of the other members of the board of directors. ~~He~~ The director or member may ~~not~~ guarantee or endorse paper for other borrowers. A borrower may repay ~~his~~ the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 118

HOUSE BILL NO. 1404
(Gates, Opedahl)

CREDIT UNION ENDORSEMENTS

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to the authority of credit unions to provide missing endorsements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Depository credit union - Endorsements. A depository credit union that has taken a check or draft for collection may supply any endorsement of the member which is necessary to title unless the item contains the words "payee's endorsement required" or words to that effect. In the absence of such a requirement, a statement placed on the item by the depository credit union to the effect that the item was deposited by a member or credited to that member's account is effective as the member's endorsement. An intermediary credit union, or payor credit union, which is not a depository credit union, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the credit union's immediate transferor.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 119

HOUSE BILL NO. 1185
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

INSOLVENT BANKS

AN ACT to create and enact section 6-07-04.1 of the North Dakota Century Code, relating to orders to show cause on insolvency, exceptions for emergencies, and recourse for aggrieved banks; and to amend and reenact sections 6-07-15 and 6-07-33 of the North Dakota Century Code, relating to district courts' supervision over administrative receiverships and confidentiality of proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 6-07-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-07-04.1. Insolvent bank - Order to show cause hearing - Exception. Upon a determination by the commissioner that any bank is insolvent, the commissioner may order the bank to inject capital in an amount determined by the commissioner to be sufficient to permit the bank to operate in a safe and sound condition or show cause why it should not be declared insolvent by the state banking board. The commissioner's order shall include the basis for his determination, with reasonable specificity, and identify and attach the pages or portions of the examination report or other documents supporting his determination. The order to show cause hearing shall be heard by the state banking board. The minimum notice for the hearing shall be three business days. In the commissioner's order to inject capital or show cause why it should not be declared insolvent by the state banking board, the commissioner shall indicate whether a purchase and assumption transaction is contemplated if the banking board declares the bank insolvent. If the state banking board determines that the bank is insolvent, the board shall appoint a receiver. The receiver shall exercise its powers as set forth in this chapter.

The hearing provided for in this section is not required when the bank is in violation of an existing final capital order and the state banking board has determined that an emergency exists which may result in serious losses to the depositors. In such a case, the

state banking board may declare the bank insolvent without a hearing and appoint a receiver. The receiver shall exercise all powers as set forth in this chapter.

Recourse may be taken from actions taken under this section only in accordance with the provisions of section 6-07-14.

SECTION 2. AMENDMENT. Section 6-07-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-15. Powers of receiver. Upon taking charge of the assets and business of any bank, the receiver appointed by the state banking board, after having qualified in the manner hereinbefore provided, is authorized to collect all moneys due to such bank, and to do such other acts as are necessary to conserve its business and assets, and he shall proceed to liquidate the affairs thereof. He shall have general and inclusive power and authority, except as otherwise limited by the provisions of this chapter, to do any and all acts and to take any and all steps necessary, or in his discretion desirable, for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs thereof, and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is practicable or desirable. He may institute in his own name, as receiver, or in the name of the insolvent bank, such suits, actions, and other legal proceedings as he deems expedient for such purposes and for the enforcement of stockholders' liability. He may sell, compromise, or compound any bad or doubtful debt or claim and sell and dispose of any or all of the assets of the bank upon receiving an order so to do from the district court having jurisdiction of such matters as hereinafter provided. Such sale may be made to stockholders, officers, directors, or others interested in the insolvent bank on consent of the court. ~~The bank shall be notified of any application or petition under this section, by the receiver, by the service of a notice upon an officer or director thereof, which shall be served in like manner as a summons in a civil action, and the hearing on the application or petition may be had at any time after said bank has had five days' notice of the petition or application.~~

SECTION 3. AMENDMENT. Section 6-07-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-33. Designation of district judge for administrative bank receiverships --~~Court in which papers filed. The supreme court, in the exercise of its supervisory jurisdiction, shall designate some district judge to court of the district in which the bank is located shall~~ have jurisdiction in connection with administrative receiverships of insolvent banks, and the judge so designated shall give precedence to such matters. Wherever in this chapter reference is made to the district court having jurisdiction over the matters and proceedings set forth in this chapter, ~~the such district judge so designated by the supreme court shall be the court referred to, and the district court of the county in which such designated~~

district judge has his chambers shall be the proper court in which to file any and all papers required to be filed by the provisions of this chapter. Prior to the filing of an application for relief or for supervisory proceedings under chapter 6-07, a party to the proceedings before the banking board may request that the district judge order the confidentiality of the proceedings in the district court. The request must be by affidavit and is confidential. Upon showing that undue injury may otherwise result to any party, or as determined necessary to preserve the status quo, the judge may order the confidentiality of the court's proceedings until after a purchase and assumption has been completed or until liquidation is commenced.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 120

SENATE BILL NO. 2135
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FAILING BANK ACQUISITION

AN ACT to create and enact section 6-07-04.2 of the North Dakota Century Code, relating to emergency action of the acquisition of a failing institution; and to amend and reenact sections 6-01-17 and 6-02-05 of the North Dakota Century Code, relating to the yearly assessment of banks and application for an organization certificate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 6-07-04.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-07-04.2. Acquisition of an institution. The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. In considering potential acquisition, the receiver of an insolvent institution or the board, when acting under the provisions of this section, shall entertain bids from potential purchasers in the following manner:

1. First consideration must be given to bids to purchase any or all of the total assets and liabilities made by any of the following, which intend to operate the acquired institution as a bank:
 - a. An individual or individuals desiring to acquire control of the institution.
 - b. A new bank organized under chapter 6-02.
 - c. A bank holding company the home state of which is North Dakota.
2. Second consideration must be given to banks acquiring any or all of the total assets and liabilities of the institution to operate it as a paying and receiving

station, in which case the bids must be considered in the following order:

- a. Banks qualifying to acquire the institution under section 6-03-14.
- b. North Dakota banks within a seventy-five mile radius of the insolvent or failing institution.
- c. Banks within the state of North Dakota.

The receiver of an insolvent institution or board when acting under the provisions of this section, may accept a bid of a lower order bidder under subsection 1 or 2, provided the bid is otherwise acceptable and is for an amount at least ten percent greater than a bid of a higher order. The receiver of an insolvent institution or board when acting under the provisions of this section, may reject any and all bids.

The procedure for acquisition to operate as a bank or a paying and receiving station may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held. Notwithstanding section 6-03-18, a paying and receiving station established by acquisition under this section shall not be required to discontinue operation by commencement of business by a banking institution at the same place.

* SECTION 2. AMENDMENT. Section 6-01-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-17. Yearly assessment of banks. Every state banking association and banking institution placed under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by the provisions of this title shall pay into the state treasury the following yearly assessment: one and one-quarter hundredths of one percent of gross amount of the assets of said corporation or association on June thirtieth of each year, exclusive of expenses, interest, and taxes paid, and inclusive of any valuation allowance or allowances deducted by a state banking association from any asset account. Such fee shall not be less than seven hundred fifty dollars and not more than seven thousand five hundred dollars. Assessment fees shall not be computed on the combined assets of the bank and its trust department for those banks exercising trust powers. The minimum and maximum shall apply to the assets of the bank separate from the assets of the trust department, and fees for examination of the trust department shall be computed in accordance with section 6-05-28. The assessment shall be paid to the state treasurer within thirty days of each June thirtieth, ~~except that institutions whose examination has begun within the six months immediately prior to July 1, 1983, shall not have to pay the first yearly assessment.~~ Institutions that have not been examined by the commissioner or the state banking board for three years prior

* NOTE: Section 6-01-17 was also amended by section 4 of House Bill No. 1010, chapter 10.

to any assessment date shall not be required to pay the assessment. The state treasurer shall report such payments of fees to the state banking board, and if any such corporation or institution shall be delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation or institution until payment of the amount due, plus a penalty of five dollars a day additional for the delay.

SECTION 3. AMENDMENT. Section 6-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-02-05. Acknowledgment of organization certificate - Application for certificate of authority - Notice of hearing. The organization certificate shall be acknowledged before the clerk of some court of record or a notary public, and, together with the acknowledgment thereof, shall be authenticated by the seal of such court or notary. The same thereupon shall be transmitted to the state banking board with a request for permission to present the same to the secretary of state, with application to him for the issuance of a certificate of authority. Upon receiving such organization certificate, the board shall cause notice of the application therefor to be published in the official newspaper of the county within which such association is proposed to be established. Such notice shall contain a statement of a time when and place where the board will hear such application and shall specify that any person objecting thereto may appear and show cause why such application should not be approved. Upon the consolidation of banks, acquisition pursuant to section 6-07-04.2, or the conversion of a national bank to a state bank, notice of such hearing need not be given.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 121

HOUSE BILL NO. 1122
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

STATE BANKING BOARD BANK POSSESSION

AN ACT to amend and reenact sections 6-07-10 and 6-07-11 of the North Dakota Century Code, relating to acquisition of a bank which voluntarily places itself in possession of the state banking board, and appointment of a receiver for a bank that voluntarily places itself in the possession of the state banking board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 6-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-10. Bank may be placed in possession of board - Notice - Appointment of receiver. Any bank, by a majority vote of its board of directors, may place its assets and affairs in the possession of the state banking board by notifying the state examiner that it is ceasing business and the reason therefor, and by placing a notice on the front door of its place of business as follows: "This bank is in the hands of the state banking board". Immediately on receipt of such notice, the state banking board shall take possession and assume control of all of the property and assets of such bank until a receiver is appointed. No business shall be transacted by such bank after the notification and posting of the notice described in this section. If the bank places its assets and affairs in the possession of the state banking board for the purpose of acquisition pursuant to section 6-07-04.2, the bank shall place a majority of its capital stock in the possession of the state banking board. In such case, the bank may not cease doing business nor shall the bank post the public notice.

SECTION 2. AMENDMENT. Section 6-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-11. Appointment of administrative receiver. Whenever the state banking board shall become satisfied of the insolvency of a corporation, or association organized under the provisions of this title, after due examination of its affairs, ~~it~~ or if the bank has been voluntarily placed in the possession of the state banking board for the purpose of liquidation pursuant to section 6-07-10, the state banking board may appoint a receiver who shall proceed to close up such corporation or association, and who, during the period he is acting as such, shall have all of the powers and be subject to all of the restrictions prescribed in this chapter.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 122

HOUSE BILL NO. 1577
(Lindgren, Moore)

LAW ENFORCEMENT ACCESS TO FINANCIAL INFORMATION

AN ACT to amend and reenact sections 6-08.1-02, 6-08.1-05, and 6-08.1-07 of the North Dakota Century Code, relating to law enforcement access to customer information retained by a financial institution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08.1-02. Exemptions. This chapter does not apply to any of the following:

1. The preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or the examination of such information by an accountant engaged by the financial institution to perform an audit.
2. The examination of any customer information by, or the furnishing of customer information to, any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of his duties.
3. The publication of data derived from customer information where the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the uniform commercial code concerning the dishonor of any negotiable instrument.

6. The exchange in the regular course of business of customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
 - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.
 - b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. An examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.

SECTION 2. AMENDMENT. Section 6-08.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08.1-05. Government access.

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
 - a. The consent of the customer, in accordance with this chapter.
 - b. Valid legal process, in accordance with this section.
2. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if ~~all of the following are met:~~
 - a- ~~There~~ there is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.

- b- A copy of the subpoena has been personally served on the customer, or his legal representative, or has been mailed to the customer or his legal representative at his last-known address on or before the date of the subpoena, together with a notice that describes the nature of the inquiry, the specific customer information sought, and a description of the customer's right to challenge the subpoena pursuant to this chapter.
- e- Ten days have passed from the date of personal service of the subpoena on the customer or his legal representative, or fourteen days have passed from the date the subpoena was mailed to the customer or his legal representative, and the customer has not exercised his right to challenge the subpoena pursuant to this section.
3. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a search warrant if it obtains the search warrant pursuant to the rules of criminal procedure of this state. Examination of the customer information may occur as soon as it is reasonably practicable after the warrant is served on the financial institution. The law enforcement agency or governmental agency must mail a copy of the warrant and a notice specifying the nature of the information obtained to the customer or his legal representative within thirty days of the time the financial institution complies with the search warrant. A court of competent jurisdiction may delay the notice requirement as provided for in this section. In no event may notification be delayed for more than one year following the seizure pursuant to the search warrant.
- 4- a- Within ten days of personal service of the judicial or administrative subpoena upon the bank and the customer or his legal representative, or fourteen days from the date of the subpoena if the subpoena is mailed to the customer or his legal representative, the customer may file a motion to quash the subpoena, with copies of the motion to quash served on the governmental agency or law enforcement agency and on the financial institution. If the subpoena issues from a court, the motion should be filed in that court. If the subpoena issues from a governmental agency or law enforcement agency, the motion shall be filed in a court of competent jurisdiction. The financial institution shall not disclose the information until the motion has been heard and decided.
- b- The motion shall be accompanied by an affidavit stating both of the following:

- (1) The applicant is the customer about whom the customer information pertains-
 - (2) The applicant's reasons for believing that the material sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law-
- e- During the period for filing the motion to quash, and continuing until the final ruling on the motion, upon the customer's request, the financial institution shall supply the customer with a copy of the customer information sought-
- d- The judge or magistrate shall grant the motion if either of the following is met-
- (1) The information sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law-
 - (2) There has not been substantial compliance with the provisions of this chapter-
- 5- a- Upon petition of the governmental agency or law enforcement agency, the customer notice requirements of this chapter may be delayed by a court of competent jurisdiction if all of the following are met-
- (1) The investigation conducted is within the authority of the governmental agency or law enforcement agency-
 - (2) The disclosure sought is pursuant to a proper law enforcement objective or is otherwise authorized by law-
 - (3) The provision of notice to the customer would seriously impede the investigatory process-
- b- Notice may be delayed under this subsection for no more than thirty days. Upon application of the governmental agency or law enforcement agency, notice may be delayed for two additional thirty-day periods-
- e- When the court grants the petition to delay notice, a copy of the court order shall be attached to the summons or subpoena and served on the financial institution-

* SECTION 3. AMENDMENT. Section 6-08.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 6-08.1-07 was also amended by section 1 of Senate Bill No. 2106, chapter 123.

6-08.1-07. Cost reimbursement. Any governmental agency, law enforcement agency or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution. A financial institution must deliver the customer information sought as soon as reasonably possible notwithstanding any dispute concerning the amount of reimbursement due under this section. A separate action may be maintained by the financial institution against the governmental agency, law enforcement agency, or person requesting access for recovery of reasonable reimbursement.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 123

SENATE BILL NO. 2106
(Committee on Appropriations)
(At the request of the State Auditor)

AUDIT INFORMATION FEES

AN ACT to amend and reenact section 6-08.1-07 of the North Dakota Century Code, relating to the fee charged by financial institutions for preparing customer information for the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 6-08.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08.1-07. Cost reimbursement. Any governmental agency, law enforcement agency or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution. The financial institution may not charge the state auditor for customer information requested when performing an audit; however, the financial institution may charge the entity being audited by the state auditor for the information requested.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 6-08.1-07 was also amended by section 3 of House Bill No. 1577, chapter 122.

CHAPTER 124

SENATE BILL NO. 2480
(Senators Adams, Tallackson)
(Representatives Dalrymple, Shide)

SALE OF CERTAIN BANKS

AN ACT to provide for the sale of banks and bank holding companies owned by charitable trusts; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the legislative assembly to act pursuant to the Bank Holding Company Act of 1956, as amended [ch. 240; 70 Stat. 134; 12 U.S.C. 1842(d)], to limit the authority granted by this Act to charitable trusts that owned one hundred percent of a bank holding company on May 26, 1969, to sell, assign, merge, or transfer the stock or assets of any bank or bank holding company owned directly or indirectly by such charitable trust to any state or national bank or bank holding company without regard to whether the entity acquiring the stock or assets is located outside this state to enable the divestiture of such ownership by a charitable trust as required by the provisions of section 4943 of the Internal Revenue Code.

SECTION 2. Sale of banking institutions owned by charitable trusts. Except as prohibited by North Dakota Century Code section 6-02-02.1, a charitable trust that owned one hundred percent of a bank holding company on May 26, 1969, may sell, assign, merge, or transfer the stock or assets of any bank or bank holding company owned directly or indirectly by the charitable trust, pursuant to the procedures set forth in North Dakota Century Code section 6-08-08.1, to a bank holding company, bank, or any other entity located in any state pursuant to applicable banking laws.

SECTION 3. Presentment of plan of acquiring entity to the state department of banking and financial institutions. Prior to any acquisition under this Act, the acquiring entity must present a plan to the state department of banking and financial institutions. The plan must provide that the acquiring entity commits itself to the condition that it capitalize each bank to be acquired in this state according to the applicable banking laws of this state and the requirements of the federal deposit insurance corporation or any applicable federal banking laws.

SECTION 4. Offer to purchase minority stock required. Any bank holding company owned by a charitable trust that sells, assigns, merges, or transfers the stock of any bank or bank holding company pursuant to this Act shall communicate to and offer to purchase the stock of any minority stockholder of the bank or bank holding company. The offer must be made to minority stockholders at least sixty days before the date of the sale and must extend thirty days after the sale of the bank or bank holding company. The offer must remain open for at least ninety days or for the same period as that which is offered to minority stockholders of the company's banks located in other states, whichever period is greater. The offer to purchase minority stock in banks in this state must be based on at least the same criteria, standards, and formula as may be used by the bank holding company in computing an offer to purchase the minority stock of its banks in other states. The resulting offer to purchase must be on the same or better terms as any previous offer made by the bank holding company except for those previous offers made by reason of repurchase options between the bank holding company and the stockholder. Such repurchase options may not be used as a basis for determining the offer to purchase other minority stock.

SECTION 5. Grants requirement - Commitment - Reports to attorney general. Any charitable trust that divests itself of any interest pursuant to this Act shall file a commitment with the attorney general prior to any divestiture that the charitable trust will, subject to the provisions of the trust instrument pursuant to which the trust was created, continue to make grants under the provisions of the trust to recipients within this state. The charitable trust must report annually to the attorney general describing the grants made by the charitable trust to all recipients in the previous year. Upon the basis of such information, or other information that may be brought to the attorney general's attention, the attorney general may initiate further investigation and ensure compliance with the requirements of this section.

SECTION 6. Designation of agent for service of process. Any charitable trust that divests itself of any interest pursuant to this Act shall designate the secretary of state as its agent for service of process in this state.

SECTION 7. Limitations.

1. The authority granted by this Act does not authorize the acquiring entity to resell, reassign, merge, or transfer stock or assets of any state or national bank or bank holding company acquired under this Act except as permitted under the laws of this state.
2. This Act does not limit or restrict the rights of a charitable trust to sell, assign, merge, or transfer the stock or assets of any state or national bank or bank holding company owned directly or indirectly by the

charitable trust under the provisions of any existing or hereafter adopted state or federal law or regulation.

3. This Act does not permit the sale, assignment, merger, or transfer by a charitable trust that directly or indirectly owns banks in Minnesota as well as in North Dakota of the stock or assets of any state or national bank or bank holding company located in this state if the sale, assignment, merger, or transfer by the charitable trust would be prohibited under the laws of Minnesota.

SECTION 8. Provisions not severable. Notwithstanding North Dakota Century Code section 1-02-20, if any provision of this Act is determined by any court of competent or final jurisdiction to be invalid or unconstitutional, this entire Act is void.

SECTION 9. EXPIRATION DATE. Section 2 of this Act is effective through June 30, 2004, and after that date is ineffective.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 125

SENATE BILL NO. 2516
(Senators Waldera, Wogsland, Ingstad)
(Representatives Haugen, Moore)

BUSINESS LOANS

AN ACT to amend and reenact section 6-09-15.4 of the North Dakota Century Code, relating to loans to small business concerns and to nonprofit corporations for lending to rural businesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-15.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-15.4. Bank loans to beginning businessmen - Requirements. The Bank of North Dakota may participate in the making of loans to beginning businessmen with other financial institutions who are authorized to make such loans. As used in this section, "beginning businessman" means any person who is a resident of this state; receives more than one-half his annual income from a revenue-producing enterprise; intends to use any revenue-producing enterprise that he wishes to purchase or rent for business purposes; and has had adequate training, by experience or education, in the type of revenue-producing enterprise which he wishes to begin. Participations in loans to small business concerns - Direct loans to nonprofit corporations.

1. The North Dakota industrial commission shall establish a program through the Bank of North Dakota for the purpose of participating in loans made by North Dakota financial institutions to nonfarming small business concerns. The total amount of a loan may not exceed two hundred fifty thousand dollars and the Bank's participation interest may not exceed ninety percent of the total amount of the loan. The interest rate on the amount of the Bank's participation interest in a loan must not be greater than the Bank's base rate as in effect from time to time, and may float.
2. The Bank, under Public Law No. 99-198 [99 Stat. 1534, 7 U.S.C. 1932 et seq.], may make direct loans to nonprofit corporations for the purpose of relending loan funds to rural businesses to improve business, industry, and employment opportunities in rural areas.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 126

SENATE BILL NO. 2129
(Committee on Industry, Business and Labor)
(At the request of the Economic Development Commission)

BANK OF NORTH DAKOTA INVESTMENT

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to the Bank of North Dakota investment in a public venture capital corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bank may invest in a public venture capital corporation. The Bank of North Dakota may invest in a public venture capital corporation.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 127

HOUSE BILL NO. 1302
(Representative Ulmer)
(Senator Mushik)

PARKS AND RECREATION FACILITIES LOANS

AN ACT to allow the Bank of North Dakota to make loans to nonprofit corporations for construction, reconstruction, repair, or renovation of facilities under the control of the parks and recreation department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Bank of North Dakota may make loans for improvement of facilities under the control of the parks and recreation department. The Bank of North Dakota may make loans to nonprofit organizations which are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]. Proceeds of loans under this section must be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the state parks and recreation department. A loan under this section may be made in an amount not exceeding two hundred thousand dollars to any eligible organization.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 128

SENATE BILL NO. 2119
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA INSTRUMENTS

AN ACT to amend and reenact section 6-09-26.1 of the North Dakota Century Code, relating to the execution of instruments on behalf of the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-26.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-26.1. Execution of instruments. In the absence of any provision regulating the execution and acknowledgment of conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens on, title to, or interests in real estate, the president, ~~cashier~~, ~~vice presidents~~, and attorney may execute and acknowledge such instruments on behalf of the Bank of North Dakota. Other officers of the Bank of North Dakota when authorized so to do by resolution of the industrial commission may execute and acknowledge such instruments on behalf of the Bank of North Dakota.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 129

SENATE BILL NO. 2154
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

MUNICIPAL BOND BANK

AN ACT to amend and reenact section 6-09.4-04 of the North Dakota Century Code, relating to the North Dakota municipal bond bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-04. Creation of bond bank. A bond bank is hereby established within the Bank of North Dakota, under the operation, management, and control of the industrial commission to be known as the "North Dakota municipal bond bank". The bond bank is constituted as an instrumentality of the state exercising public and governmental functions, and the exercise by the bond bank of the powers conferred by this chapter shall be deemed and held to be an essential governmental function of the state.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 130

SENATE BILL NO. 2161
(Committee on Agriculture)
(At the request of the Governor)

OPERATING LOAN PROGRAM

AN ACT to amend and reenact sections 6-09.9-02 and 6-09.9-04 of the North Dakota Century Code, relating to an operating loan program for farmers and agribusinesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.9-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agribusiness" means a locally owned business operation, located within this state, which is primarily engaged in providing services, materials, or equipment for the production, processing, or transportation of agriculture products.
2. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater ~~or has suffered some form of unavoidable natural or financial hardship in at least one of the past four years.~~ The industrial commission may adopt additional eligibility criteria in determining who is a farmer eligible for loans under this chapter.
3. "Operating loan" means a loan or extension of credit with a term of one year or less made by a nongovernmental financial institution to a farmer or agribusiness for the operation of an existing farm or ranch operation or agribusiness. An operating loan includes a farmer's home administration or small business administration subordinated operating loan and guaranteed operating loan, and may be further defined by rule of the industrial commission.

SECTION 2. AMENDMENT. Section 6-09.9-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-04. Participation loans by private financial institutions.

1. The portion of the operating loan retained by a nongovernmental financial institution may not bear interest at an effective rate more than one and one-half percentage points per annum less than the interest rate computed and published monthly by the state commissioner of banking and financial institutions pursuant to section 47-14-09. The initial interest rate must be set on the date of the loan commitment and must be adjusted quarterly, based upon the last published interest rate computed by the commissioner. The industrial commission may adopt rules relating to the maximum rate of interest charged on the portion of the operating loan retained by a participating financial institution.
2. All participation interests purchased are subject to the review and approval of the Bank.
3. The full amount of a loan qualifying for participation must be evidenced by one master note drawn by the financial institution to reflect both interest rates and to provide a schedule of payments to the financial institution and the Bank of North Dakota based upon pro rata shares of the loan participation.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 131

SENATE BILL NO. 2159
(Committee on Agriculture)
(At the request of the Governor and the
Commissioner of Agriculture)

CREDIT REVIEW BOARD

AN ACT to create and enact a new section to chapter 6-09.10 of the North Dakota Century Code, relating to liability of the credit review board; to amend and reenact sections 6-09.10-02, 6-09.10-03, and 6-09.10-04 of the North Dakota Century Code, relating to the credit review board; and to repeal sections 4-01-19.2 and 4-01-19.3 of the North Dakota Century Code, relating to the farm credit counseling program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-02. Credit review board. The governor shall appoint ~~three members~~ one member of the credit review board, ~~the commissioner of agriculture shall appoint one member of the credit review board, and the attorney general shall appoint one member of the credit review board.~~ One member of the board must have experience serving as a director or officer of a financial institution. Two members of the board must have experience in the operation of a farm. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board. ~~The governor credit review board members shall appoint members to serve terms of four two years. The governor shall appoint one member to serve as chairman of the board.~~

SECTION 2. AMENDMENT. Section 6-09.10-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-03. Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. ~~The board shall serve as a negotiator between a farmer who is in danger of immediate foreclosure or who has received a notice of foreclosure on a farm and has petitioned the board, and any lender who holds a valid~~

mortgage upon the property. The board may hire staff, subject to appropriations, to serve as negotiators for the board. The department of agriculture shall administer the farm credit counseling program. The commissioner of agriculture shall establish a farm credit counseling program to disseminate information to farmers concerning farm credit problems, and provide advice and counseling regarding farm credit problems. The commissioner shall appoint an administrator of the farm credit counseling program to administer the program. The commissioner shall hire staff and negotiators and may mediate between a farmer who has requested assistance and the farmer's creditors. The board may charge a reasonable fee for any assistance provided to a farmer, such funds to be used to continue the program until June 30, 1989. The board shall adopt policies governing the negotiators and staff hired under this section. Board members are entitled to receive fifty dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 3. AMENDMENT. Section 6-09.10-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-04. Petition Request for assistance - Negotiation.

1. Any farmer may petition the board for aid after receipt of a notice of foreclosure, or if the farmer is in danger of immediate foreclosure request the assistance of a negotiator. Upon receipt of the petition request, the board or its authorized agent shall negotiator may enter into negotiations with the lender, on behalf of the farmer.
2. The board or its authorized agent negotiator shall negotiate with the lender in an attempt to extend the term of the loan, reduce the dollar amount of payments under the loan, or otherwise negotiate a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agricultural commodities. Any change in the terms of the mortgage must be approved by the lender and the farmer.

SECTION 4. A new section to chapter 6-09.10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Liability. The board, staff, and negotiators are not subject to any liability arising from actions undertaken on behalf of a farmer in attempting to reach a settlement with a lender.

SECTION 5. REPEAL. Sections 4-01-19.2 and 4-01-19.3 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 132

SENATE BILL NO. 2477
(Senators Kelsh, Keller, Richard)
(Representatives O'Connell, Brokaw, Shockman)

DISTRESSED FARMER AND BUSINESS ASSISTANCE

AN ACT to create and enact six new sections to chapter 6-09.10 of the North Dakota Century Code, relating to a legal and tax assistance program for financially distressed farmers and small business persons; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Six new sections to chapter 6-09.10 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Contract for legal and tax assistance - Administration. The credit review board and the commissioner of agriculture shall hire or contract with one or more lawyers, law firms, accounting firms, or nonprofit organizations to provide eligible farmers and small business persons with legal and tax assistance. The board and the commissioner may contract with the university of North Dakota school of law to provide research services to eligible farmers and small business persons. A contract may be terminated by the credit review board upon written notice. The credit review board and the commissioner of agriculture are responsible for administering funds under each contract and for selecting appropriate cases among eligible farmers and small business persons.

Legal and tax service contract requirements. Any contract entered into pursuant to this Act to provide legal or tax services to selected eligible farmers or small business persons may be awarded for the following purposes:

1. To offer direct representation to selected eligible farmers and small business persons in litigation and administrative cases, if applicable.
2. To offer legal or tax advice, or both, to selected eligible farmers or small business persons.

3. To provide research services, consulting assistance, and copies of briefs and case law to attorneys representing selected eligible farmers and small business persons, if applicable.

Eligible farmers and small business persons.

1. An eligible farmer means a farmer who has a debt to asset ratio of greater than fifty percent and is unable to pay for legal or tax assistance without impairing funds needed for necessary family living and farm operating expenses.
2. An eligible small business person is a person who owns a small business or is a partner or shareholder in a small business, who has an occupation in small business, and who has a debt-to-asset ratio of greater than fifty percent and is unable to pay for legal or tax assistance without impairing funds needed for necessary family living and small business operating expenses. For purposes of this Act, a small business means a small business concern as defined under Public Law No. 85-536, section 2(3), 72 Stat. 384; 15 U.S.C. 632, as amended.

Payment for assistance. Any farmer or small business person who receives assistance under this Act is obligated to pay for the value of the services plus interest at the rate of one percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months in effect for North Dakota for the six months immediately prior to the month in which the original transaction occurs, as computed and declared on the last day of each month by the state banking commissioner. The credit review board may defer payment for a period of one to five years after services are rendered. Upon proof of financial hardship at the end of the deferral period, the board may waive payment of all or a part of the amount owed.

Alternatives to litigation - Cooperation with other service providers. Any person providing assistance under this Act shall:

1. Attempt to resolve any conflict through the use of negotiation, mediation, and amicable settlements.
2. Cooperate with the North Dakota state university extension service so that its economic and farm management financial analyst services are utilized by selected eligible farmers.
3. Cooperate with the farm credit counseling program and existing informational and referral networks among farmers, farmer advocates, small business persons, and others concerned with the economic crisis in agricultural and small business concern areas.

Legal action to resolve disputes should only be taken where other alternatives are unsuitable or impossible.

Assumption of powers and duties of credit review board. The attorney general shall assume the powers and duties of the credit review board under this Act if the credit review board ceases to exist.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the home-quarter purchase fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much thereof as may be necessary, to the credit review board for the purpose of providing assistance to financially distressed farmers and small business persons as provided in this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 133

HOUSE BILL NO. 1584
(Brokaw, Gerntholz, Myrdal, Stofferahn, Shaw)

FAMILY FARMER ASSISTANCE

AN ACT to provide financial assistance to family farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Declaration of findings and purpose. The legislative assembly finds and declares that:

1. The family farm provides an efficient system of food production, as well as economic and social stability. No other system of agricultural production can provide the opportunities of individual enterprise to as many families in our state. The family farm provides dispersed benefits to our society, and it remains the most viable system of agricultural production for our nation.
2. Our system of family farm agriculture today faces a serious crisis. Depressed commodity prices resulting from surplus production, lack of cashflow, deflated asset values, increasing debt problems, and tight credit have combined to make it impossible for a large segment of family farm agriculture to survive.
3. In order to survive, many of these family farms will need to restructure their operations, restructure their debt, undertake new, more profitable enterprises, and make other necessary changes. Some of these family farm operations will need the opportunity to begin again.
4. Our state is suffering from this financial crisis in agriculture that affects the entire economic health of this state and its communities. Without significant changes in public policies to meet this crisis, our state's economy will continue to suffer.
5. The Bank of North Dakota is a vital resource for all North Dakota citizens, and the Bank of North Dakota must develop innovative ways to help North Dakota family farms

restructure, recapitalize, and adapt to the current economic situation. To do so will strengthen not only the agricultural sector of our economy, but also the state's economy as a whole.

SECTION 2. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Economic farm unit" means a farm capable of producing income sufficient to support the operator of the farm and the farmer's family, if any, and to repay moneys borrowed under this Act to establish the unit within the term of the loan.
2. "Family farm" means agricultural real estate operated and owned or leased by a farmer, or other organization authorized to own or lease land used for farming or ranching under chapter 10-06, where the majority of the labor necessary to operate the farm is performed by the farmer and the farmer's family, if any.
3. "Farmer" means a resident of North Dakota involved in the production of an agricultural commodity on a family farm or who will be involved in the production of an agricultural commodity on a family farm if granted a loan, and who meets the definition of "farmer" as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08.

SECTION 3. Industrial commission - Powers and duties - Bonds. Except as provided in this Act, the industrial commission may exercise the powers and perform the duties set forth in chapter 4-36 to the extent necessary to administer this Act. The commission may issue bonds under chapter 4-36 as is necessary to provide sufficient funds to make loans to lenders for the purposes of this Act.

SECTION 4. Loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 5 of this Act. Interest charged on a participation interest purchased by the Bank under this section may not exceed eight percent per annum, plus necessary and reasonable fees as determined by the industrial commission.
2. The amount of a participation interest purchased by the Bank under this section may not be greater than ninety percent of the loan amount.

SECTION 5. Loans to farmers - Purposes.

1. The following purposes are eligible to be funded by bond proceeds or loan participations under this Act:
 - a. Purchasing or leasing agricultural real estate.
 - b. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer.
 - c. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil.
 - d. Purchasing farm equipment.
 - e. Purchasing livestock.
 - f. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agriculture real estate owned or purchased by the farmer.
 - g. Purchasing the farmer's home-quarter pursuant to chapter 6-10.

SECTION 6. Loan applications. An applicant for a loan must meet all of the following qualifications:

1. The applicant is at least eighteen years of age.
2. The applicant has resided in North Dakota continuously during the three years immediately preceding the date of the application.
3. The applicant is a farmer.
4. The applicant has had the farming experience and training necessary to enable the applicant to operate a family farm and to make proper use of the proceeds of the loan.
5. The net worth of the applicant does not exceed one hundred fifty thousand dollars.

SECTION 7. Loan restrictions.

1. Except for loans made to purchase the farmer's home-quarter, no loan may be made under this Act unless the farm is an economic farm unit or it is reasonably expected that the farm unit will, as a result of the loan, constitute an economic farm unit.

2. A loan to a farmer under this Act may not exceed fifty thousand dollars. A farmer may borrow money under this Act in a lump sum or in installments.
3. A loan under this Act may not exceed ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the industrial commission. The industrial commission may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to make a loan under this Act.
4. Except as otherwise provided:
 - a. A loan under this Act must be repayable in installments and may have a term up to twenty years.
 - b. All or part of a loan under this Act may be repaid on any day on which an installment is due, subject to conditions set forth in the mortgage.

SECTION 8. Insurance requirements. Buildings on land given as security for a loan must, while any part of the loan remains unpaid, be insured against fire or casualty for their full insurable value, and the insurance policy must be assigned as collateral security. Livestock, crops on land, and other chattels given as security for a loan must be insured against risk.

SECTION 9. Records. Every borrower shall keep records showing the financial condition of the borrower's family farm.

SECTION 10. Postponement of repayment of principal. If the income of a borrower is reduced in any year due to causes beyond the borrower's control to the extent that the borrower is unable to make a payment on a loan under this Act, the industrial commission may defer the payment of the principal sum due in that year and the term of the loan may be extended for the period of deferment.

SECTION 11. Credit review board. Applicants for home-quarter purchases pursuant to 6-9.10 shall initially apply to the credit review board and the credit review board shall make recommendations regarding eligibility of the applicant and the feasibility of the loan application.

SECTION 12. Rules. The industrial commission may adopt such rules and guidelines as are necessary to implement sections 1 through 10 of this Act.

Approved April 1, 1987
Filed April 2, 1987

CONTRACTS AND OBLIGATIONS

CHAPTER 134

SENATE BILL NO. 2465
(Senator Holmberg)
(Representative Hamerlik)

INVENTION DEVELOPMENT

AN ACT to provide for regulation of invention development services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Contract for invention development services" includes a contract by which an invention developer undertakes to develop or promote an invention for a customer.
2. "Customer" means any individual who is solicited by, inquires about, seeks the services of, or enters into a contract with an invention developer for invention development services.
3. "Invention" includes a process, machine, manufacture, composition of matter, improvement upon the foregoing, or a concept.
4. "Invention developer" means any person, and the agents, employees, or representatives of the person, that develops or promotes or offers to develop or promote an invention of a customer in order that the customer's invention may be patented, licensed, or sold for manufacture or manufactured in large quantities, except the term does not include:
 - a. A partnership or corporation when all of its partners, stockholders, or members are licensed by a state or the United States to render legal advice concerning patents and trademarks, or a person so licensed.
 - b. A department or agency of federal, state, or local government.

- c. A charitable, scientific, educational, religious, or other organization described in section 170(b)(1)(A) of the Internal Revenue Code of 1954.
- d. An entity that does not charge a fee for invention development services.
- e. An entity whose gross receipts from contracts for invention development services do not exceed ten percent of its gross receipts from all sources during the fiscal year preceding the year in which any contract for invention development services is signed.
- f. A partnership or corporation that accepts technology from institutions of higher education and other state and federal research institutions for evaluation and the providing of marketing services.

For the purposes of this subsection, "fee" includes any payment made by the customer to the entity, including reimbursements for expenditures made or costs incurred by such entity, but does not include a payment made from a portion of the income received by a customer by virtue of invention development services performed by the entity.

5. "Invention development services" includes acts required or promised to be performed, or actually performed, by an invention developer for a customer.

SECTION 2. Notice to customers.

1. Every contract for invention development services must be in writing and is subject to this Act. A copy of each fully executed contract must be given to the customer at the time the customer signs the contract.
2. If one or more contracts are contemplated by the invention developer in connection with an invention or if the invention developer contemplates performance of services in connection with an invention in more than one phase with the performance of each phase covered in one or more contracts, the invention developer shall so state in a written statement and shall supply to the customer the written statement together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer signs the first contract.

SECTION 3. Right of cancellation.

1. Notwithstanding any contractual provision to the contrary, the customer has the unconditional right to cancel a contract for invention development services for any reason

at any time before midnight of the third business day following the date the invention developer and the customer sign the contract and the customer receives a fully executed copy of it. Written notice of cancellation may be delivered personally or by mail. If given by mail, the notice is effective upon placement in the possession of the United States postal service, properly addressed and first-class postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the customer not to be bound by the contract. Within ten business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by mail, all moneys paid, any note or other evidence of indebtedness, and all materials provided by the customer.

2. Every contract for invention development services must contain the following statement in ten-point boldface type immediately above the place where the customer signs the contract:

The three-business-day period during which you may cancel this contract for any reason by mailing or delivering written notice to the invention developer will expire on (last date to mail or deliver notice). If you choose to mail your notice, it must be placed in the United States mail addressed to (name of invention developer), at (address of invention developer's place of business) with first-class postage prepaid before midnight of this date. If you choose to personally deliver your notice to the invention developer, it must be delivered to the invention developer by five p.m. on this date.

SECTION 4. Mandatory contract form.

1. A contract for invention development services must set forth the information required in this section in at least ten-point type or equivalent size if handwritten.
2. The following disclosure statement must be in boldface type and must be located conspicuously on a cover sheet that contains no other writing:

The following disclosures are required by law and are expressly made a part of this contract: You have the right to cancel this contract for any reason at any time within three business days from the date you and the invention developer sign the contract and you receive a fully executed copy of it. To exercise this option you need only mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is

set forth in this contract immediately above the place for your signature. Upon cancellation, the invention developer must return by mail or personal delivery, within ten business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party in your behalf.

Unless the invention developer is an attorney or patent agent registered with the United States patent office, the invention developer is not permitted to give you legal advice concerning patent, copyright, or trademark law or to advise you of whether your idea or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law.

No patent, copyright, or trademark protection will be acquired for you by the invention developer or by this contract. Your failure to inquire into the law governing patent, copyright, or trademark matters may jeopardize your rights in your idea or invention both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyrights, patent rights, or trademark rights of other persons if you proceed to make, use, distribute, or sell your idea or invention.

3. The contract must describe fully and in detail the acts or services that the invention developer contracts to perform for the customer.
4. The contract must state whether the invention developer contracts to construct one or more prototypes, models, or devices embodying the customer's invention, the number of such prototypes to be constructed, and whether the invention developer contracts to sell or distribute such prototypes, models, or devices.
5. If an oral or written estimate of customer earnings is made, the contract must state the estimate and the data upon which it is based.
6. In a single statement the contract must set forth both the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the last thirty days, and the number of customers who have received, by virtue of the invention developer's performance of invention development services, an amount of money in excess of the amount of money paid by such

customers to the invention developer pursuant to a contract for invention development services.

7. The contract must state the expected date of completion of the invention development services.
8. The contract must state whether and the extent to which it effectuates or makes possible the purchase by the invention developer of an interest in the title to the customer's invention.
9. The contract must explain that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period not less than three years after expiration of the term of the contract for invention development services.
10. The contract must state that the records and correspondence required to be maintained pursuant to section 8 of this Act will be made available to the customer or the customer's representative for review and copying at the customer's expense on the invention developer's premises during normal business hours upon seven days' written notice, the time period to begin from the date the notice is placed in the United States mail properly addressed and first-class postage prepaid.
11. The contract must state the name of the person or firm contracting to perform the invention development services, all names under which said person or firm is doing or has done business as an invention developer during the previous ten years, the names of all parent and subsidiary companies to the firm, and the name of all companies that have a contractual obligation to the firm to perform invention development services.
12. The contract must state the invention developer's principal business address and the name and address of its agent in this state authorized to receive service of process in this state.

SECTION 5. Disclosures made prior to contract.

1. In either the first written communication from the invention developer to a specific customer or at the first personal meeting between the invention developer and a customer, whichever occurs first, the invention developer shall make a written disclosure to the customer of the information required in this section.
2. The disclosure must state the median fee charged to all of the invention developers' customers who have signed contracts with the developer in the preceding six months,

excluding customers who have signed in the preceding thirty days.

3. The disclosure must include a single statement setting forth the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the preceding thirty days, and the number of customers who have received by virtue of the invention developer's performance of invention development services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract for invention development services.
4. The disclosure must include a single statement setting forth the names of all individuals and entities that possess an ownership interest in the invention developer and have held or presently hold more than a ten percent ownership interest in any other invention developer. The statement must include for each individual and entity the information required to be disclosed by subsection 3.
5. The disclosure must contain the following statement:

Unless the invention developer is an attorney or patent agent registered with the United States patent office, the invention developer is not permitted to give you legal advice concerning patent, copyright, or trademark law or to advise you of whether your idea or invention may be patentable or may be protected under the patent rights, copyright, or trademark laws of the United States or any other law.

No patent, copyright, or trademark protection will be acquired for you by the invention developer. Your failure to inquire into the law governing patent, copyright, or trademark matters may jeopardize your rights in your idea or invention, both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyrights, patent rights, or trademark rights of other persons if you proceed to make, use, distribute, or sell your idea or invention.

6. If the invention developer provides invention development services involving the evaluation of inventions, the disclosure must include a statement setting forth the percentage of evaluated inventions that have been successfully marketed or licensed by the invention developer. If the invention developer does not provide invention development services involving the evaluation of inventions, the disclosure must inform the customer that there is considerable risk involved in proceeding with the

development and promotion of the invention without an evaluation and must further recommend that the customer obtain an evaluation of the invention by an evaluation source. The disclosure must contain the following statement:

It is likely that no more than two percent and probably less than one percent of all inventions are successfully developed and promoted. You should evaluate your chances of success accordingly and not rely solely on the opinion of an invention developer.

SECTION 6. Financial requirements.

1. Every invention developer rendering or offering to render invention development services in this state shall maintain a bond issued by a surety company authorized to do business in this state, and equal to either ten percent of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or twenty-five thousand dollars, whichever is larger. A copy of the bond must be approved by the attorney general and filed with the secretary of state before the invention developer renders or offers to render invention development services in this state. The invention developer has ninety days after the end of each fiscal year within which to change the bond as may be necessary to conform to the requirements of this subsection.
2. The bond required by subsection 1 must be in favor of the state of North Dakota for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is damaged by fraud or dishonesty of the invention developer in performance of the contract, by the insolvency or the cessation of business by the invention developer, or by the intentional violation of this Act by the invention developer. Any person claiming against the bond may maintain a claim for relief against the invention developer and the surety company.

The aggregate liability of the surety company to all persons for all breaches of conditions of the bond may not exceed the amount of the bond.

3. In lieu of the bond required by subsection 1, the invention developer may deposit with the Bank of North Dakota a cash deposit in the like amount. The Bank of North Dakota may not refund a deposit until sixty days after either the invention developer has ceased doing business in the state or a bond has been filed which complies with subsections 1 and 2.

SECTION 7. Restriction on use of negotiable instruments. In connection with a contract for invention development services, the invention developer may not take from a customer a negotiable instrument other than a check as evidence of the obligation of the customer. A holder is not a holder in due course if the holder takes a negotiable instrument taken from a customer in violation of this section.

SECTION 8. Records. Every invention developer shall maintain all records and correspondence relating to performance of each invention development contract for a period of not less than three years after expiration of the term of the contract.

SECTION 9. Remedies and enforcement.

1. The provisions of this Act are not exclusive and do not relieve the parties or the contract from compliance with all other applicable laws.
2. Any contract for invention development services that does not comply with the applicable provisions of this Act is unenforceable against the customer as contrary to public policy; provided, that no contract is unenforceable if the invention developer proves that noncompliance was unintentional and resulted from a bona fide error in spite of the developer's use of reasonable procedures adopted to avoid any such errors, and if the developer makes an appropriate correction.
3. Any contract for invention development services entered into by a customer with an invention developer who has used any fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice in respect to that customer with the intent that the customer rely thereon, whether or not the customer was in fact misled, deceived, or damaged, is unenforceable against the customer.
4. Any waiver by the customer of the provisions of this Act is contrary to public policy and is void and unenforceable.
5. Any person who has been injured by a violation of this Act by an invention developer, by any false or fraudulent statement, representation, or omission of material fact by an invention developer or by failure of an invention developer to make all the disclosures required by this Act may bring a civil action against the invention developer for the damages sustained together with costs and disbursements, including reasonable attorney's fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages sustained.
6. Failure to make the disclosures required by section 5 of this Act renders any contract subsequently entered into between the customer and the invention developer voidable by the customer.

Approved April 7, 1987
Filed April 9, 1987

CORPORATIONS

CHAPTER 135

HOUSE BILL NO. 1666

(Strinden)

(Approved by the Committee on Delayed Bills)

SECURITIES ISSUANCE, SALE, AND REGISTRATION

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to securities transactions exempt from registration requirements; and to amend and reenact subsection 5 of section 10-04-02 and subsections 5 and 9 of section 10-04-06 of the North Dakota Century Code, relating to the issuance and sale of securities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 10-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:
 - a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;
 - b. No money or other tangible property is given for the option; and
 - c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.

SECTION 2. AMENDMENT. Subsections 5 and 9 of section 10-04-06 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. The Any offer or sale of securities to any a bank, savings bank, savings institution, trust company, insurance company, registered dealer, or any corporation, organization, or association, a principal part of whose business consists of the buying of securities investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer.

9. a. Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
 - a- (1) The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
 - b- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
 - e- (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subdivisions a, b, and e paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

- b. Any sales by an issuer to not more than twenty persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not any of the buyers is then present in this state, if all of the following conditions are met:
 - (1) The issuer reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5), except reasonable and customary commissions paid by the issuer to a dealer or salesman registered under this chapter.
- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation is used in connection with any offers or sales.
- (5) The issuer has, ten days prior to any sale pursuant to this subdivision, supplied the commissioner with a statement on forms prescribed by the commissioner containing the following information:
- (a) The name and address of the issuer and the date and state of its organization.
 - (b) The number of units, price per unit, and description of the securities to be sold.
 - (c) The amount of commissions to be paid and the persons to whom they will be paid.
 - (d) The names of all officers, directors, and persons owning five percent or more of the equity of the issuer.
 - (e) A brief description of the intended use of the proceeds.
 - (f) A description of all sales of securities made by the issuer in this state preceding the date of filing.
 - (g) A copy of the investment letter, if any, intended to be used in connection with any sale.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of buyers permitted, or waive the conditions in paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

c. The exemptions provided under subdivisions a and b may not be combined.

SECTION 3. A new subsection to section 10-04-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any offer or sale of shares of capital stock issued by a professional corporation which is organized and operated pursuant to chapter 10-31.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 136

HOUSE BILL NO. 1630
(Tomac, Meyer, Stofferahn)

FARMLAND CONVEYANCE TO CORPORATION

AN ACT to amend and reenact subsections 1 and 10 of section 10-06-13 of the North Dakota Century Code, relating to deeds conveying farmland or ranchland to a corporation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 10 of section 10-06-13 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The register of deeds shall mail or deliver a copy of every instrument filed or recorded after July 1, 1987, within thirty days of the effective date of this Act or thirty days after the instrument is recorded, whichever is later, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or ranchland used in violation of this chapter is situated, if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by

it in violation of this chapter, and cease all farming and ranching operations. Any corporation that fails to comply with the court's order shall is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved by the secretary of state.

10. Any corporation continuing to violate this chapter shall is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved by the attorney general in accordance with the laws of this state.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 137

SENATE BILL NO. 2489
(Senators Hilken, Tallackson, Reiten)
(Representatives Martin, Kingsbury, O'Connell)

COOPERATIVE OFFICERS IMMUNITY

AN ACT to create and enact a new section to chapters 10-13 and 49-21 of the North Dakota Century Code, relating to immunity from civil liability of directors, trustees, officers, and certain managers of electric cooperative corporations and telephone cooperatives; and to amend and reenact subsection 10 of section 10-15-03 and subsection 1 of section 10-15-31 of the North Dakota Century Code, relating to indemnification and immunity from civil liability of directors, officers, agents, or certain managers of cooperative associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Directors, trustees, officers, and managers - Immunity from civil liability. The directors, trustees, and officers of an electric cooperative, and the manager of an electric cooperative who is the person most responsible for carrying out the policies and directives of the officers, trustees, or the board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

SECTION 2. AMENDMENT. Subsection 10 of section 10-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. Indemnify any present or former director, officer, ~~or~~ agent, or manager against actual expenses necessarily incurred in defense of any proceeding in which he is a party because he is or was ~~sueh~~ a director, officer, ~~or~~ agent, or manager. This subsection does not apply to those proceedings in which he is adjudged liable for gross or willful negligence or gross or willful misconduct in the performance of duty. Such indemnification ~~shall~~ is

not be exclusive of other rights to which he may be entitled. For purposes of this subsection, "manager" means the person who was the most responsible for carrying out the policies and directives of the officers or the board of directors when the act or omission complained of occurred.

SECTION 3. AMENDMENT. Subsection 1 of section 10-15-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Directors who negligently or in bad faith vote for any distribution of assets contrary to this chapter or the articles are jointly and severally liable to the cooperative for the value of assets distributed in excess of the amount which could have been distributed without violating this chapter or the articles, trustees, and officers, and the manager who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

SECTION 4. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Directors, trustees, officers, and managers - Immunity from civil liability. Directors, trustees, and officers of mutual telephone companies, and the manager of a mutual telephone company who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 138

HOUSE BILL NO. 1364
(Representatives R. Berg, Whalen, Kloubec)
(Senators Tennefos, D. Meyer, Adams)

ALCOHOL OR METHANOL SUBSIDY REPORTS

AN ACT to require certain corporations receiving subsidies from the state to file annual audit reports and to submit to audit upon request.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Audit reports and audit of corporations receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any corporation that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the corporation, to the legislative audit and fiscal review committee. The report shall be submitted within ninety days of the close of the corporation's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any corporation required to submit an annual report under this section.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 139

HOUSE BILL NO. 1157
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CORPORATE DOCUMENT DISAPPROVAL

AN ACT to amend and reenact section 10-23-12 of the North Dakota Century Code, relating to notice of failure to approve filing of certain documents of foreign and domestic business corporations; and to repeal section 10-22-11 of the North Dakota Century Code, relating to filing of documents relating to amendment of articles of incorporation of a foreign corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-23-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-12. Appeal from secretary of state. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by chapters 10-19.1, through 10-22, and ~~10-23~~ to be approved by the secretary of state before the same shall be filed in his office, he shall, within ~~ten~~ thirty days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of section 10-22-16, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition

setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

SECTION 2. REPEAL. Section 10-22-11 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 140

SENATE BILL NO. 2169
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CORPORATE NAMES AND REGULATIONS

AN ACT to create and enact a new section to chapter 10-24 of the North Dakota Century Code, relating to reservation of a corporate name; to amend and reenact sections 10-24-07, 10-24-08, 10-24-09, 10-24-10, 10-24-28, 10-24-36, 10-24-37, 10-27-03, 10-27-06, 10-27-08, 10-27-09, 10-27-10, 10-27-12, 10-27-16, 10-27-17, 10-28-01, 10-28-02, and 10-28-08 of the North Dakota Century Code, relating to nonprofit corporations; and to repeal section 10-27-11 of the North Dakota Century Code, relating to foreign nonprofit corporations' articles of incorporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reserved name.

1. The exclusive right to the use of a corporate name permitted by section 10-24-07 may be reserved by any person.
2. The reservation must be made by filing in duplicate original with the secretary of state a request that the name be reserved, with the fees provided in chapter 10-28. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing in duplicate original with the secretary of state a notice of the transfer and specifying

the name and address of the transferee, with the fees provided in chapter 10-28.

SECTION 2. AMENDMENT. Section 10-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-07. Corporate name. The corporate name:

1. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the office of the secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25.
3. Shall be transliterated into letters of the English alphabet, if it is not in English.

SECTION 3. AMENDMENT. Section 10-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-08. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

1. A registered office which may or may not be the same as its principal office.
2. A registered agent, which agent may be an individual resident residing in this state whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office. Proof of the registered agent's consent to serve in that capacity must be filed in duplicate original with the secretary of state, with the fees provided in chapter 10-28.

SECTION 4. AMENDMENT. Section 10-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-09. Change of registered office or registered agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed will be identical.
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that such statement conforms to the provisions of chapters 10-24 through 10-28, he shall file such statement in his office, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the last known address of such officer. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

SECTION 5. AMENDMENT. Section 10-24-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-10. Service of process on corporation. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation

upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate an original and two copies of such process, notice, or demand, along with the fees provided in chapter 10-28. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

SECTION 6. AMENDMENT. Section 10-24-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-28. Incorporators. One or more persons may incorporate a corporation by signing, ~~verifying~~, and delivering articles of incorporation in duplicate original to the secretary of state.

SECTION 7. AMENDMENT. Section 10-24-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-36. Filing of articles of amendment. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in chapters 10-24 through 10-28 prescribed:

1. Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof.
2. File one of such duplicate originals in his office.
- 3- ~~Issue a certificate of amendment to which he shall affix the other duplicate original.~~

~~The certificate of amendment, together with the A duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.~~

SECTION 8. AMENDMENT. Section 10-24-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-37. Effect of certificate articles of amendment. Upon the issuance filing of the certificate articles of amendment by the secretary of state, the amendment becomes effective and the articles of incorporation are deemed to be amended accordingly.

An amendment does not affect any existing claim for relief in favor of or against such corporation, or any pending action to which such corporation is a party, or the existing rights of persons other than members. If the corporate name is changed by amendment, no action brought by or against such corporation under its former name may be abated for that reason.

SECTION 9. AMENDMENT. Section 10-27-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-03. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the office of the secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25.
3. Shall be transliterated into letters of the English alphabet, if it is not in English.

SECTION 10. AMENDMENT. Section 10-27-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto certificate of good standing, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as provided in chapters 10-24 through 10-28:

1. Endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof.
2. File in his office one of such duplicate originals of the application and the ~~copy of the articles of incorporation and amendments thereto~~ good standing certificate.
3. Issue a certificate of authority to conduct affairs in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

SECTION 11. AMENDMENT. Section 10-27-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-08. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

1. A registered office which may or may not be the same as its principal office.
2. A registered agent, which agent may be an individual resident residing in this state whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office. Proof of the registered agent's consent to serve in that capacity must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-28.

SECTION 12. AMENDMENT. Section 10-27-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-09. Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.

5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

SECTION 13. AMENDMENT. Section 10-27-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-10. Service of process on foreign corporation. The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate an original and two copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it

is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

SECTION 14. AMENDMENT. Section 10-27-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-12. Merger of foreign corporation authorized to conduct affairs in this state. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and ~~such~~ the corporation shall be is not the surviving corporation, ~~it~~ the surviving corporation shall, within thirty days after such merger becomes effective, file with the secretary of state a ~~copy~~ certified statement of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for ~~such a surviving~~ such a surviving corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

SECTION 15. AMENDMENT. Section 10-27-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-16. Revocation of certificate of authority.

1. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon any of the following conditions:
 - a. The corporation has failed to pay any fees or penalties when they have become due and payable.
 - b. The corporation has failed to appoint and maintain a registered agent in this state as required by chapter 10-24.
 - c. The corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by chapter 10-24.

- d. The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger an application for an amended certificate of authority when the corporation changed its name or purposes within the time prescribed by this chapter.
 - e. The certificate of authority of the corporation was procured through fraud practiced upon the state.
 - f. The corporation has continued to exceed or abuse the authority conferred upon it by chapters 10-24 through 10-28.
 - g. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 10-24 through 10-28.
2. No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:
 - a. He shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and
 - b. The corporation shall fail prior to revocation to pay such fees or penalties, or file the required statement of change of registered agent, or file such articles of amendment application for amended certificate of authority or articles certified statement of merger, or correct such misrepresentation.

SECTION 16. AMENDMENT. Section 10-27-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-17. Issuance of certificate notice of revocation. Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate notice of revocation in duplicate.
2. File one of such certificates notices in his office.
3. Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate notice of revocation, the authority of the corporation to conduct affairs in this state shall cease.

SECTION 17. AMENDMENT. Section 10-28-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-28-01. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, twenty thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, or filing restated articles of incorporation, twenty dollars.
3. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty thirty dollars.
4. Filing a statement of change of address of registered office or change of registered agent, or both, five restated articles of incorporation, thirty dollars.
5. Filing articles of dissolution, five twenty dollars.
6. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, twenty-five a statement of change of address of registered office or change of registered agent, or both, ten dollars.
7. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, twenty-five a registered agent's consent to serve in that capacity, ten dollars.
8. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state resignation as registered agent, ten dollars.
9. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state an application to reserve a corporate name, ten dollars.
10. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal a notice of transfer of a reserved corporate name, ten dollars.
11. Filing any other statement or report of a domestic or foreign corporation, five an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.

12. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
13. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, twenty dollars.
14. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
15. Filing any other statement or report of a domestic or foreign corporation, twenty dollars.

SECTION 18. AMENDMENT. Section 10-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-28-02. Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and ~~two~~ ten dollars for the certificate and affixing the seal thereto.
2. At the time of any service of process on him as resident agent of a corporation, ~~five~~ twenty dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SECTION 19. AMENDMENT. Section 10-28-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-28-08. Appeal from secretary of state. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by chapters 10-24 through 10-28 to be approved by the secretary of state before the same shall be filed in his office, he shall, within ~~ten~~ thirty days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to conduct affairs in this state of any foreign

corporation, pursuant to the provisions of chapter 10-27, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this state and a copy of the notice of revocation given by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

SECTION 20. REPEAL. Section 10-27-11 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 141

HOUSE BILL NO. 1633
(Representative Strinden)
(Senator Olson)

VENTURE CAPITAL CORPORATION

AN ACT to provide for the establishment of a North Dakota venture capital corporation; to create and enact a new subsection to section 7-02-10, a new subsection to section 10-04-05, a new subsection to section 10-04-06, a new subdivision to subsection 1 of section 57-38-01.2, and a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to legal investments of savings and loan associations, exempt securities and transactions, and adjustments to taxable income for income tax purposes; to amend and reenact sections 6-03-38 and 6-09.2-01, subsection 1 of section 6-09.2-03, sections 6-09.2-04, 6-09.2-05, 6-09.2-07, 6-09.2-08, 6-09.2-09, 6-09.2-10, 6-09.2-11, and 10-30.1-05, subsection 14 of section 15-03-04 as amended by section 1 of House Bill No. 1031, as approved by the fiftieth legislative assembly, subsection 14 of section 21-10-07, and subsection 30 of section 26.1-05-19 of the North Dakota Century Code, relating to the industrial development revenue bond guarantee program, venture capital corporations, and legal investments of banks, the board of university and school lands, the state investment board, and insurance companies; and to repeal section 6-09.2-06 of the North Dakota Century Code, relating to the industrial development revenue bond fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the corporation established by section 2 of this Act.
3. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, or

corporation domiciled in North Dakota, or a corporation, including a wholly owned subsidiary of a foreign corporation, that does business primarily in North Dakota or does substantially all of its production in North Dakota.

4. "Professional investor" means any bank, bank holding company, savings institution, trust company, credit union, insurance company, or any person, partnership, or other entity whose principal business is making venture capital investments.
5. "Shareholder" means a registered owner of shares in the corporation.

SECTION 2. Public corporation established - Corporate purpose. A committee comprised of three representatives of the business sector appointed by the industrial commission and three members of the economic development commission shall establish under the Business Corporation Act a public corporation known as the "Myron G. Nelson Fund, Incorporated" and file articles of incorporation for the corporation with the secretary of state. The committee shall also adopt the initial bylaws of the corporation. The purpose of the corporation is to organize and manage an investment fund capitalized through the sale of shares of the corporation to the Bank of North Dakota and other public and private investors to provide a source of investment capital for the establishment, expansion, and rehabilitation of North Dakota businesses.

SECTION 3. Powers of corporation. The corporation shall have the powers and privileges conferred upon domestic corporations under the Business Corporation Act, to the extent not limited by this Act, including the power to:

1. Make contracts and execute all instruments necessary for the exercise of its powers and functions.
2. Coordinate and cooperate with state agencies and the state's political subdivisions, colleges, universities, and other academic and research sources, both private and public, agencies and organizations of the federal government, and all public or private entities.
3. Receive appropriations from the legislative assembly and other public moneys, as well as contributions from other public agencies, private individuals, companies, and other contributors.
4. Review cooperative funding agreements with federal and state loan and grant programs and commercially funded projects.

5. Administer an industrial development revenue bond guarantee program as provided in chapter 6-09.2.

SECTION 4. Capitalization - Payment of dividends. The funds deposited in the industrial development revenue bond fund pursuant to former section 6-09.2-06 and all accumulated earnings from the investment of the fund shall be used by the Bank of North Dakota to purchase shares of the corporation upon the issuance of the certificate of incorporation. Beginning on July 1, 1987, the Bank of North Dakota may purchase annually shares of the corporation in an amount to be determined by the industrial commission. In determining the annual investment to be made in the corporation by the Bank of North Dakota, the industrial commission shall consider the level of private investment in the corporation and attempt to match the private investment on a dollar-for-dollar basis. The corporation may issue shares to other public and private entities or persons when authorized by the board of directors.

SECTION 5. Board of directors. A board of directors, elected by the shareholders pursuant to initial bylaws adopted by the incorporators pursuant to section 2 of this Act, shall direct the business and affairs of the corporation. There must be representation on the board of directors from the economic development commission, investors, and the business sectors of the North Dakota economy. The business sector and investors must constitute a majority of the board.

SECTION 6. Professional investor to manage corporate funds - Investment policy. The board of directors shall contract with a professional investor, determined by the board of directors to be experienced in making successful venture capital investments, for the purpose of managing the corporation's investment fund. The management contract may provide that the professional investor take an active role in the management of any entity in which an equity interest is purchased. The board of directors shall annually review the investment performance of the professional investor. It shall be the policy of the corporation to invest primarily in North Dakota businesses. The corporation's investment in any one entity may not exceed a maximum of forty percent of the entity's capital. This percentage limitation does not apply to co-venture investments made on behalf of the corporation in conjunction with one or more additional professional investors. The board of directors may prescribe in the management contract that a percentage of the corporation's investment fund be made available for investment outside the state.

SECTION 7. Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase pursuant to this Act.

2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

SECTION 8. Guarantee of industrial revenue bonds. The board of directors may authorize that a portion of the corporation's investment fund be made available to guarantee industrial revenue bonds pursuant to chapter 6-09.2.

SECTION 9. Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

SECTION 10. Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public which must include audited financial statements of the corporation for the fiscal year covered by the report and must specify:

1. The manner in which the purpose of the corporation as described in section 2 of this Act has been carried out.
2. The total investments made annually by the corporation in North Dakota businesses.
3. An estimate of jobs created and jobs preserved by investments of the corporation in North Dakota businesses.
4. An estimate of the multiplier effect on the North Dakota economy of investments by the corporation in North Dakota businesses.
5. An analysis of the targeting of scarce resources by the corporation by size, sector, and location to enterprises of particular need and opportunity.

SECTION 11. Tax credits for investment in stock of corporation by banks, savings and loan associations, and insurance companies. A bank, savings and loan association, or insurance company that invests in stock issued by the corporation is entitled, subject to section 13 of this Act, to a credit in an amount equal to twenty-five percent of the total amount invested in the stock against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's tax liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section to be claimed in any one taxable year exceeds twenty-

five percent of the taxpayer's tax liability in that year may be carried back for not more than three taxable years or carried forward until the total amount of the credit is used.

SECTION 12. Income tax credits for investment in stock of corporation. A taxpayer that invests in stock issued by the corporation is entitled, subject to section 13 of this Act, to a credit in the amount equal to twenty-five percent of the total amount invested in the stock against any state income tax liability imposed against the taxpayer. In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section to be claimed in any one taxable year exceeds twenty-five percent of the taxpayer's tax liability in that year may be carried back for not more than three taxable years or carried forward until the total amount of the credit is used. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 13. Limitation on tax credits. The state tax commissioner shall allow tax credits pursuant to sections 11 and 12 of this Act which are attributable to not more than the first five million dollars of total investment in the corporation.

SECTION 14. State immunity from liability. The state of North Dakota is not liable for any damage incurred by an investor in the corporation.

SECTION 15. AMENDMENT. Section 6-03-38 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty. No bank, except as otherwise authorized in this title, shall employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor shall it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, provided, however, that a state bank may to the extent that banks subject to the laws of the federal government are permitted to do so, purchase voting common stock of Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act, or purchase shares of stocks in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the Small Business Investment Act of 1958, and any amendments thereto, or chapter 10-30 of the North Dakota Century Code, but in no event shall any state bank hold shares in small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it shall be lawful for a bank to make advances for grain or other

products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board shall have the same power to make rules and regulations for the subsidiary corporations, and to examine its records and affairs, as it has for other financial corporations under the provisions of section 6-01-04. In the event that the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition to the above, the state banking board shall have power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this Code. Any officer, director, or employee of any bank who shall invest or use its funds contrary to the provisions of this title shall be guilty of a class A misdemeanor.

SECTION 16. AMENDMENT. Section 6-09.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-01. Industrial development revenue bond guarantee program - Administration. The ~~economic development commission~~ corporation shall administer an industrial development revenue bond guarantee program as provided in this chapter.

SECTION 17. AMENDMENT. Subsection 1 of section 6-09.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "~~Commission~~" "Corporation" means the ~~economic development commission~~ corporation established by section 2 of this Act.

SECTION 18. AMENDMENT. Section 6-09.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-04. Powers. In carrying out the provisions of this chapter, the ~~commission~~ corporation is authorized and empowered:

1. To guarantee the payment of debt service on evidence of indebtedness secured by security interests in an industrial development project consistent with the terms and limitations expressed in this chapter.
2. To accept from a federal agency or North Dakota, its agencies and instrumentalities, loans or grants for use in carrying out its purposes, and to enter into agreements with such agency or North Dakota, its agencies and instrumentalities, respecting any such loans or grants.

3. To enter into agreements with prospective bondholders and issuers for the purpose of financing industrial development projects and require as a condition of guarantee that the Bank of North Dakota be the designated trustee, paying agency, and depository of all funds and accounts of all guaranteed evidence of indebtedness of the program.
4. To acquire, purchase, manage and operate, and hold and dispose of, real and personal property, to take assignments of rentals and leases, and make and enter into all contracts, leases, agreements, and arrangements necessary or incidental to the performance of its duties.
5. When in the opinion of the commission corporation it is necessary or advisable, in order to further the purposes of this chapter or to safeguard the bond guarantee fund, to purchase, acquire, attach, seize, accept, or take title to any industrial development project, by conveyance or, when any guaranteed evidence of indebtedness has been redeemed in whole or in part exercise with the consent of the bondholder any of the bondholder's rights under any of the covenants of issuance including but not limited to foreclosure, sale, lease, or rent an industrial development project for a use specified in subsection 4 of section 6-09.2-03, or for any other use.

SECTION 19. AMENDMENT. Section 6-09.2-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-05. Default by issuer. When an issuer's project lessee does not make debt service payments guaranteed by the commission's bond guarantee fund corporation, the commission corporation for the purpose of maintaining income from industrial development projects on which bonds have been guaranteed by the commission and for the purpose of safeguarding the bond guarantee fund corporation, may grant the issuer permission to lease or rent the property to a tenant for a use other than that specified in subsection 4 of section 6-09.2-03, such lease or rental to be temporary in nature and subject to such conditions as the commission corporation may prescribe; provided, however, no lease shall in any manner conflict with the provisions of chapter 40-57 or in the opinion of bond counsel issuing the opinion on the evidence of indebtedness in any way jeopardize the income tax exempt status of the interest on the bonds.

SECTION 20. AMENDMENT. Section 6-09.2-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-07. Guarantee of bonds. The commission, as the administrator of the fund created in this chapter, corporation is authorized, upon application of the proposed issuer, to guarantee

debt service payments required by evidence of indebtedness on any industrial development project, or part thereof, upon such terms and conditions as the commission corporation may prescribe, and subject to the limitations of this chapter, provided the aggregate amount of the unpaid principal balance of all obligations of all evidence of indebtedness so guaranteed outstanding at any one time shall not exceed twenty times the unencumbered balance in the fund debt service guarantee account of the fund made available by the corporation. To be eligible for guarantee under the provisions of this chapter bonds shall:

1. Be issued by a municipality as defined in chapter 40-57.
2. Involve a principal obligation, including initial service charges and appraisal, inspection, and other fees approved by the commission corporation.
3. Have a maturity date satisfactory to the commission corporation, but in no case later than forty years from the date of issuance for any project.
4. Contain complete amortization provisions satisfactory to the commission corporation requiring periodic payments, costs of local property taxes and assessments, land lease rentals, if any, and hazard insurance on the property and such bond guarantee fees as are required under section 6-09.2-08, all as the commission corporation shall from time to time prescribe or approve.
5. Be in such form and contain such terms and provisions, with respect to property, insurance, repairs, alterations, payment of taxes and assessments, restrictions as to location of machinery and equipment, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, and other matters as the commission corporation may prescribe.

SECTION 21. AMENDMENT. Section 6-09.2-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-08. Bond guarantee fees. The commission corporation shall charge ~~three~~ two percent of the principal obligation of the evidence of indebtedness as a fee for guarantee of debt service payments on evidence of indebtedness guaranteed by the fund debt service guarantee account corporation. The commission shall deposit the fee ~~in the fund debt service guarantee account.~~ The commission corporation shall charge an annual administrative fee of three-eighths of one percent of the outstanding principal obligation of all evidence of indebtedness guaranteed by the fund debt service guarantee account corporation. The issuer's project lessee shall pay the fee in the manner the commission corporation prescribes. Earnings on bond-funded reserve accounts and debt service accounts must be deposited in that bond's debt service account for the

payment of principal and interest on the bonds. Other earnings on the investment of any accounts held by the fund must be first deposited in the fund administration account. Any moneys declared by the commission to be surplus and not essential to the administration of this chapter may be transferred on order of the commission to the fund debt service guarantee account.

SECTION 22. AMENDMENT. Section 6-09.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-09. Expenses. The commission corporation may expend out of the fund administration account such moneys as may be necessary for any expenses of the commission corporation in carrying out the provisions of this chapter.

SECTION 23. AMENDMENT. Section 6-09.2-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-10. Bonds eligible for investment. Evidence of indebtedness bonds guaranteed by the commission corporation under this chapter are legal investments for all trust companies, banks, investment companies, savings banks, credit unions, savings and loan associations, executors, administrators, guardians, conservators, trustees and other fiduciaries, pension, profit-sharing, and retirement funds to the extent limited by law.

SECTION 24. AMENDMENT. Section 6-09.2-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-11. Limitation - Credit of commission and state not pledged. Nothing in this chapter shall be construed to authorize or permit the commission corporation or any officer thereof to create any indebtedness of the commission corporation or of North Dakota, or to incur any obligation of any kind or nature, except such as shall be payable solely from the fund created in made available by the corporation pursuant to this chapter and the revenues appropriated and accumulated therein.

SECTION 25. A new subsection to section 7-02-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

In voting common stock of Myron G. Nelson Fund, Incorporated, purchased pursuant to section 4 of this Act.

SECTION 26. A new subsection to section 10-04-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Securities issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act.

SECTION 27. A new subsection to section 10-04-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

The offer or sale of a security issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act.

SECTION 28. AMENDMENT. Section 10-30.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-05. Tax credit.

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1.
2. The state tax commissioner shall administer sections 10-30.1-05 through 10-30.1-10. The state tax commissioner may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the administration of sections 10-30.1-05 through 10-30.1-10.

SECTION 29. AMENDMENT. If House Bill No. 1031 of the fiftieth legislative assembly becomes effective, subsection 14 of section 15-03-04 of the North Dakota Century Code, as amended by House Bill No. 1031, is hereby amended and reenacted to read as follows:

14. Common or preferred stocks of any corporation organized under the laws of any state, including nonvoting preferred stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 4 of this Act but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks.

SECTION 30. AMENDMENT. If House Bill No. 1031 of the fiftieth legislative assembly does not become effective, subsection 14 of section 21-10-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. Common or preferred stocks of any corporation organized under the laws of any state, including nonvoting preferred stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 4 of this Act but not more than twenty

percent of the assets of each fund may be invested in common and preferred stocks.

SECTION 31. AMENDMENT. Subsection 30 of section 26.1-05-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30. Loans, securities, or investments in addition to those permitted in this section, including voting common stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 4 of this Act whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate of such company's investments under this subsection may not exceed either five percent of the company's admitted assets, or the amount equal to the company's unassigned surplus, whichever is less.

SECTION 32. A new subdivision to subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act to the extent the dividends are included in taxable income.

SECTION 33. A new subdivision to subsection 1 of section 57-38-01.3 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act to the extent the dividends are included in taxable income.

SECTION 34. REPEAL. Section 6-09.2-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 14, 1987
Filed April 15, 1987

COUNTIES

CHAPTER 142

SENATE BILL NO. 2359
(Wogsland)

COUNTY OFFICERS

AN ACT to amend and reenact section 11-10-02 of the North Dakota Century Code, relating to the number and election of county officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code, shall have the following officers:

1. One county auditor.
2. One register of deeds.
3. One clerk of the district court.
4. One state's attorney.
5. One sheriff.
6. One county judge, except that the board of county commissioners of any two or more counties may enter into an agreement to provide for election of a judge or judges to serve the county courts of the counties entering the agreement.
7. One county treasurer.
8. One coroner.
9. One county superintendent of schools.
10. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the register of deeds must be ex officio clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. In counties having a population of twenty-five thousand or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty-five thousand, the clerk of district court must be clerk of county court. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge, and clerk of the district court, who shall be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who shall be chosen in the manner prescribed in section 11-11-02, and the county coroner, who shall be chosen in the manner prescribed in section 11-19.1-03.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 143

HOUSE BILL NO. 1648
(Tomac)

COUNTY DIRECTOR OF TAX EQUALIZATION

AN ACT to amend and reenact subsection 2 of section 11-10.1-01 of the North Dakota Century Code, relating to the qualifications of the county director of tax equalization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-10.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The board of county commissioners may, in its discretion, appoint a person on a probationary basis who does not hold a current certificate as provided for in subsection 1, if the board deems such person qualified to act as county director of tax equalization by virtue of education, training, and experience. Such appointment shall be for a term of not more than ~~four~~ three years. Any person receiving such probationary appointment who does not obtain an assessor's certificate within ~~four~~ three years of his appointment, shall not be eligible for reappointment.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 144

HOUSE BILL NO. 1113
(Committee on Political Subdivisions)
(At the request of the State Auditor)

COUNTY COMMISSION FINANCIAL REPORTS

AN ACT to amend and reenact section 11-11-11 of the North Dakota Century Code, relating to reports required by the board of county commissioners; and to repeal section 11-13-05 of the North Dakota Century Code, relating to monthly verification of cash by the county auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-11. General duties of board of county commissioners. The board of county commissioners:

1. Shall superintend the fiscal affairs of the county.
2. Shall supervise the conduct of the respective county officers.
3. May cause to be audited and verified the accounts of all officers having the custody, management, collection, or disbursement of any moneys belonging to the county or received in their official capacity.
4. On the first Monday of July annually, shall cause to be made a full and accurate statement of the assessments, receipts, and expenditures of the county for the preceding year and the taxes receivable, accounts receivable, and the indebtedness of the county at the end of the fiscal year, and it shall have the same published in at least one newspaper in the county. If there is no newspaper in the county the same shall be posted at the usual meeting place of the board. Before February first of each year, shall have the county auditor prepare general purpose financial statements in accordance with generally accepted accounting principles. Public notice that financial statements have been prepared and are available for inspection must be published in the official newspaper.

SECTION 2. REPEAL. Section 11-13-05 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 145

SENATE BILL NO. 2445
(Senator Mushik)
(Representative Ulmer)

COUNTY BLOCK GRANT TRANSACTIONS

AN ACT to amend and reenact subsection 18 of section 11-11-14 of the North Dakota Century Code, relating to the power of a board of county commissioners in administering community development block grant transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 18 of section 11-11-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 18. To loan or ~~give~~ grant money to and secure a mortgage from individuals, associations, or corporations and to purchase ownership shares in corporations or other business associations as provided through the procedures established by the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383, 88 Stat. 633, 42 U.S.C. 5301 et seq.]. This power applies to all community development block grant transactions of the board of county commissioners, including any transactions prior to ~~March 22, 1985~~ July 1, 1987. The county is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the county is incurred.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 146

HOUSE BILL NO. 1317
(Representative J. DeMers)
(Senator Holmberg)

COUNTY COMMISSION PROCEEDING PUBLICATION

AN ACT to amend and reenact section 11-11-37 of the North Dakota Century Code, relating to the publication of the report of the proceedings of the board of county commissioners; and to repeal section 11-13-09 of the North Dakota Century Code, relating to the publication of the auditor's report of the proceedings of the board of county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-37. Proceedings of board of county commissioners to be published in official newspaper - When published. The board of county commissioners shall ~~cause to be published in supply~~ to the official newspaper of the county a full and complete report of its official proceedings at each regular and special meeting no later than ~~thirty seven~~ days after the meeting at which the report is read and approved. The publisher of the official newspaper shall ~~cause publish~~ the report of the proceedings of the board of county commissioners to be published in the issue of ~~his the~~ paper next succeeding the time of its reception, and shall ~~cause to be filed file~~ with the county auditor an affidavit of publication executed in the proper form.

SECTION 2. REPEAL. Section 11-13-09 of the North Dakota Century Code is hereby repealed.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 147

HOUSE BILL NO. 1672
(Representatives Mertens, G. Berg)
(Senator Stromme)
(Approved by the Committee on Delayed Bills)

SERVICE CONNECTION ASSESSMENTS

AN ACT to amend and reenact section 11-11-55.1 of the North Dakota Century Code, relating to county authority to provide special assessment improvements for service connections; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-55.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-55.1. Petition for improvements - Levy of special assessments. The board of county commissioners of any county, upon receipt of a petition of sixty percent of the landowners in a defined area, outside of the limits of any incorporated city, may install the petitioned improvements as benefit the defined area, provide for the financing of the improvements, and levy special assessments for the payment of all or part of the improvements within the defined area. In providing for the improvements, the county shall have the authority granted to municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, and 40-27, and 40-28, and the county shall comply with the provisions of those chapters in making the improvements. Whenever action is required of city officials in those chapters, the comparable county officials shall take the action.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 148

SENATE BILL NO. 2452
(Senators D. Meyer, Maixner)
(Representatives Anderson, Whalen)

COUNTY BOND GUARANTEE PROGRAMS

AN ACT to create and enact a new section to chapter 11-11 of the North Dakota Century Code, relating to the establishment of county bond guarantee programs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bond guarantee fund - Purpose - Limitations. The board of county commissioners of any county having a population of not more than two thousand may establish a bond guarantee fund as provided in this section. The bond guarantee fund may be used to guarantee the indebtedness of nonprofit corporations organized for the purpose of constructing and operating nursing homes and related health care facilities located in this state. The nursing home or related health care facilities need not be located within the boundaries of the county establishing the bond guarantee fund. The board of county commissioners shall establish the terms and conditions of any agreements entered under this section. The funds used to guarantee a project under this section must be deposited in a federally insured account in such amounts as are determined necessary to guarantee the indebtedness of the nonprofit corporation incurred for the purposes authorized under this section. Nothing in this section is to be construed as creating an indebtedness of the county or the state or as incurring any liability on the county or the state, except the liability payable solely from the assets of the bond guarantee fund.

SECTION 2. **EMERGENCY.** This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 149

SENATE BILL NO. 2115
(Senator Lashkowitz)
(Representative Moore)

HANDICAPPED PROGRAMS AND ACTIVITIES LEVY

AN ACT to create and enact a new section to chapter 11-11, a new section to chapter 40-05, a new subsection to section 57-15-06.7, a new subsection to section 57-15-10, and a new section to chapter 57-15 of the North Dakota Century Code, relating to authorization and funding of county, city, and park district programs and activities for handicapped persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Programs and activities for handicapped persons - Expenditure of funds.
The board of county commissioners may establish or maintain programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. The board may expend funds received from state, federal, or private sources for the public purposes provided for in this section. No expenditure may be made to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives the funds must be reviewed or approved annually by the board to determine its eligibility to receive funds under this section.

SECTION 2. A new section to chapter 40-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Programs and activities for handicapped persons - Expenditure of funds.
The governing body of any city or park district may establish or maintain programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. The governing body may expend funds received from state, federal, or

private sources for the public purposes provided for in this section. No expenditure may be made to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the governing body in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives the funds must be reviewed or approved annually by the governing body to determine its eligibility to receive funds under this section.

SECTION 3. A new subsection to section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A county levying a tax for programs and activities for handicapped persons according to section 1 of this Act may levy a tax not exceeding one-half mill.

SECTION 4. A new subsection to section 57-15-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Taxes levied for programs and activities for handicapped persons in accordance with section 5 of this Act may be levied in an amount not exceeding one-half mill.

SECTION 5. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authorization of tax levy for programs and activities for handicapped persons - Elections to authorize or remove the levy - Handicapped person programs and activities.

1. The board of county commissioners of any county is hereby authorized to levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city or park district in the county is authorized to levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city or park district in the county is void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax may not exceed the limitation in section 3 of this Act and section 4 of this Act. The proceeds of the tax must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy is in addition to any moneys expended by the board of county commissioners pursuant to section 1 of this Act or by the governing body

of any city or park district pursuant to section 2 of this Act.

2. The levy authorized by this section may be used to fund an intergovernmental program under a joint powers agreement pursuant to chapter 54-40, but may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board of county commissioners or the governing body of the city or park district in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives funds under this section must be reviewed or approved annually by the board of county commissioners or the governing body of the city or park district to determine its eligibility to receive funds under this section.
3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors voting in an election in the county, city, or park district. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election is presented to that governing body.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 150

SENATE BILL NO. 2546
(Mushik)

(Approved by Committee on Delayed Bills)

CENTENNIAL COORDINATING COMMITTEES

AN ACT to create and enact a new section to chapter 11-11 and a new section to chapter 40-05 of the North Dakota Century Code, relating to the authority of counties and cities to establish centennial coordinating committees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Board may establish centennial coordinating committee. The board of county commissioners may establish a county centennial coordinating committee to develop and implement special countywide projects to celebrate this state's centennial of statehood in 1989. The board shall appoint the members of the committee, if established. The members of the committee shall serve for the duration of the committee's existence. The board shall fill any vacancy on the committee by appointment. The board or the committee may receive or expend funds for the development and promotion of centennial projects. The committee shall cooperate with the North Dakota centennial commission. Any committee established under this section terminates as of July 1, 1991.

SECTION 2. A new section to chapter 40-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Centennial coordinating committee. The governing body of any city may establish a local centennial coordinating committee to develop and implement special communitywide projects to celebrate this state's centennial of statehood in 1989. The governing body of the city shall appoint the members of the committee, if established. The members of the committee shall serve for the duration of the committee's existence. The elected presiding officer of the governing body of the city shall fill any vacancy by appointment. The governing body of a city or the local centennial coordinating committee may receive or expend funds for the development and

promotion of centennial projects. The local centennial coordinating committee shall cooperate with the North Dakota centennial commission. Any committee established under this section terminates as of July 1, 1991.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 151

HOUSE BILL NO. 1289
(Representatives Shaw, Opedahl, D. Olsen)
(Senators W. Meyer, Naaden)

MUSEUM LOANS AND RECORDS

AN ACT to create and enact a new section to chapter 11-11 of the North Dakota Century Code, relating to objects loaned or donated to local museums which have closed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Museum records - County historical society - Disposition of loaned or donated objects. Every nonprofit or noncounty museum in this state which is loaned or receives by donation any object for public display or safekeeping must keep a record of those objects. The record must indicate the owner or owners of the loaned objects and their addresses. A duplicate of the record must be filed with the county in which the museum is located. The board of directors or any person in charge of a museum which is closing or closed must return loaned objects to the recorded owners. All unreturned or unclaimed objects must be retained for two years to ensure that individuals have the opportunity to reclaim loaned objects. After that time, unclaimed objects may be disposed of at the discretion of the board of directors or person in charge of the museum.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 152

SENATE BILL NO. 2264
(Committee on Political Subdivisions)
(At the request of the Economic Development Commission)

**JOB DEVELOPMENT AUTHORITY COOPERATIVE
AGREEMENTS**

AN ACT to amend and reenact subsection 9 of section 11-11.1-03 of the North Dakota Century Code, relating to the powers and duties of job development authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 11-11.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. To cooperate with political subdivisions in exercising any of the powers granted by this section, including enabling agreements permitted under chapter 54-40.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 153

HOUSE BILL NO. 1653
(Representative Wentz)
(Senator Satrom)

COUNTY RECORD DESTRUCTION

AN ACT to repeal section 11-13-17 of the North Dakota Century Code, relating to the destruction of county records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 11-13-17 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 154

HOUSE BILL NO. 1052
(Legislative Council)
(Interim Law Enforcement Committee)

PEACE OFFICER STANDARDS AND LICENSING

AN ACT to provide for peace officer standards, training, and licensing; to amend and reenact section 11-15-01.1 of the North Dakota Century Code, relating to qualifications of sheriffs; to provide a penalty; to provide for transitional provisions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-01.1. Sheriff shall be qualified elector and shall receive required training - Exception. Except as otherwise specifically provided by state law, the sheriff shall be a qualified elector in the county in which the sheriff is elected or appointed. Within one year after taking office, the sheriff shall attend the sheriffs' school on civil process for one week, the complete police and sheriff's basic training course, and the police supervision course for two weeks if such schools are available within the state, unless equivalent training has already been attained. The police and sheriff's basic training course requirement does not apply to any sheriff who has at least five years' experience in the law enforcement field and unless already licensed under sections 2 through 15 of this Act, shall begin the training necessary to become so licensed. Within two years after taking office, the sheriff shall complete the procedures required to be licensed under sections 2 through 15 of this Act.

SECTION 2. Definitions. In sections 2 through 15 of this Act, unless the context or subject matter otherwise requires:

1. "Board" means the peace officer standards and training board.
2. "Division" means the criminal justice training and statistics division.

3. "Director" means the director of the division.

4. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 3. License required. An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed under sections 2 through 15 of this Act.

SECTION 4. Persons and practices not affected. Sections 2 through 15 of this Act do not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.
5. A person performing peace officer duties in an official capacity as a federal officer.

SECTION 5. Board - Powers - Duties - Authority. The board shall administer, coordinate, and enforce sections 2 through 15 of this Act, evaluate the qualifications of applicants, and approve the examinations for licensing under sections 2 through 15 of this Act. The board shall keep records and minutes necessary to carry out its functions. The board may:

1. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating sections 2 through 15 of this Act or rules adopted by the board.
2. Examine, under oath, any applicant for licensing.
3. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.

4. Adopt rules that relate to professional conduct or carry out the policy of sections 2 through 15 of this Act, including rules relating to professional licensure, continuing education, and to establishment of ethical standards of practice, for persons holding a license to practice peace officer duties.

SECTION 6. Fees. The board shall prescribe by rule the fee for application for examination, for an initial license, for renewal of a license, and for late renewal of a license. The board shall administer fees received under sections 2 through 15 of this Act in accordance with section 54-44-12.

SECTION 7. Application for license. An applicant for a license as a peace officer shall file a written application provided by the board showing to the satisfaction of the board that the applicant:

1. Is of good moral character.
2. Possesses a high school diploma or general education equivalency certificate.
3. Has had a complete background investigation conducted by the parent agency or the division.
4. Has passed a medical and psychological examination approved or prescribed by the board.
5. Has successfully completed a training program recognized by the board.
6. Has passed an examination as provided in section 8 or has arranged to take such an examination and is eligible for a limited license under section 10.
7. Has complied with rules of the board.

SECTION 8. Examination for license.

1. Only a person satisfying the requirements of subsections 1 through 5 of section 7 may apply for examination. The application must be filed in the manner the board prescribes and be accompanied by fee prescribed under section 6. The fee is nonrefundable. A person who fails an examination may apply for reexamination upon payment of the prescribed fee.
2. Each applicant for licensing must be examined by written examination as established by the board.
3. Applicants for licensing must be examined at a time and place and under supervision as the board requires.

4. Applicants may obtain their examination scores and may review their papers in accordance with rules adopted by the board.

SECTION 9. Exception from training requirement - Issuance of certain licenses as of right.

1. Peace officers with experience or training outside this state before January 1, 1989, may qualify for exception from portions of the training requirement. The applicant shall apply to the board for an exception. After review the board may grant a complete or partial exception. Before the issuance of a license, the applicant must successfully complete the written examination.
2. The board shall grant a license to any person certified as a peace officer before July 1, 1989.

SECTION 10. Limited license. Pending successful completion of the written examination required by sections 2 through 15 of this Act, the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer than the earlier of the expiration of the next available training session, until the person is issued a license under section 11, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

SECTION 11. Issuance of license. The board shall issue a license to any person who meets the requirements of sections 2 through 15 of this Act and who has paid the prescribed license fee.

SECTION 12. Renewal of license.

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.

2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer.

SECTION 13. Adverse license action - Appeal.

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions if the person:
 - a. Has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of an offense determined by the board to have a direct bearing upon a person's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the person is not rehabilitated under section 12.1-33-02.1.
 - b. Has used unjustified deadly force in the performance of the duties as a peace officer as described in section 12.1-05-07.
 - c. Has made a false material statement under oath to the board.
 - d. Has made a false material statement to the board while obtaining or renewing a license or permit.
 - e. Has violated sections 2 through 15 of this Act.
2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement.
3. An appeal from the final decision of the board to refuse to issue, to not renew, to suspend, or to revoke a license may be made to the district court. Venue is the county in which the aggrieved person resides. The appeal must be made within ninety days from the service of the decision on the person.

SECTION 14. Notice and hearing on adverse license action.

The board may, on a verified complaint of any person setting forth facts which, if proven, would constitute grounds for refusal, suspension, nonrenewal, or revocation of a license, investigate the actions of any person holding or claiming to hold a license. Before taking the adverse action, the board shall, at least ten days before the date set for the hearing, give written notice to the subject of

the adverse action of any charges made and shall afford that person an opportunity to be heard in person or by counsel on the matter. The written notice may be served by personal service or by registered mail. If service cannot be made by personal service or registered mail, then service may be made by publication in the county of residence specified by the person in the person's last communication with the board. At the time and place fixed in the notice, the board shall conduct the hearing on the charges. Both the accused person and the complainant are entitled to ample opportunity to present in person or by counsel, statements, testimony, evidence, and argument pertinent to the charges or to any defense. The board may continue the hearing from time to time.

SECTION 15. Penalty. Violation of sections 2 through 15 of this Act is a class B misdemeanor.

SECTION 16. Transitional provisions - Duty of Peace Officer Standards and Training Board to adopt rules. Before July 1, 1988, the board shall adopt rules to implement sections 2 through 15 of this Act.

SECTION 17. EFFECTIVE DATE. Section 1, the introductory paragraph to section 2, subsection 1 of section 2, the introductory paragraph to section 5, subsection 4 of section 5, section 6, subsection 4 of section 8, section 10 as it relates to rulemaking authority, and subsection 2 of section 13 of this Act are effective July 1, 1987. Otherwise, this Act is effective July 1, 1989.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 155

SENATE BILL NO. 2295
(Senator Nalewaja)
(Representative Wald)

FILING FEES

AN ACT to amend and reenact section 11-18-05 and, if House Bill No. 1044 of the fiftieth legislative assembly does not become effective, section 35-08-04 of the North Dakota Century Code, relating to fees of the register of deeds and filing fees for motor fuel liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-18-05. Fees of register of deeds. The register of deeds shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, five dollars for the first page and two dollars for each additional page.
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.
 - (3) Each real estate instrument must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording.

- (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the front side of each instrument for register of deeds' recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge ~~shall~~ must be levied.
- b. ~~Multipurpose mortgages or mineral instruments which contain additional mortgages or mineral instruments~~ Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, five dollars for the first page and two dollars for each additional page plus three dollars for each such additional mortgage or mineral instrument described therein.
 - c. Plats, irregular tracts, or annexations, five dollars for one lot plus ten cents for each additional lot.
 - d. Oil, gas, and mineral leases, six dollars per page.
2. For filing any instrument, ~~three~~ five dollars.
 3. For making certified copies of any ~~ether~~ recorded instrument, ~~the same charge as for recording that instrument~~ is five dollars for the first page and two dollars for each additional page.
 4. For making a copy of any other filed instrument, one dollar.
 5. For filing ~~and, indexing, making, or completing~~ any statement, ~~abstract, or certificate~~ under the Uniform Commercial Code, three dollars; and when a nonstandard statement is presented for filing, an additional fee of two dollars shall be made. For completing a Uniform Commercial Code certificate requesting copies, three dollars for the first three copies or fraction thereof, and one dollar for each additional copy the fee is the same as that provided in sections 41-09-42 and 41-09-43, as applicable.
 - 6- For filing and indexing a financing statement termination, ~~three dollars.~~
 - 7- For making a Uniform Commercial Code financing statement abstract, ~~three dollars for the first five entries and one dollar for each additional five entries or fraction thereof.~~

* SECTION 2. AMENDMENT. If House Bill No. 1044 does not become effective, section 35-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-08-04. Lien for furnishing motor fuel - Filing. Any person who furnishes gasoline, diesel fuel, tractor fuel, or other motor fuel to another to be used for the production of any agricultural crop ~~shall be~~ is entitled to a lien upon all crops produced by the use of ~~such that~~ fuel to secure the payment of the purchase price thereof upon compliance with the ~~provisions of~~ this section. At any time after the fuel has been furnished, but in no event later than the first day of November in the year ~~such the~~ fuel was furnished, the person selling ~~such the~~ fuel ~~shall~~ must perfect ~~his~~ the lien by filing in the office of the register of deeds of the county in which the crop is produced a verified statement showing the name and address of the person claiming the lien, the name of the person to whom the fuel has been furnished, the name of the crop or crops grown by ~~such the~~ purchaser, a description of the land upon which the crop was grown, and the amount of fuel furnished. From ~~and~~ after the date of filing the statement provided in this section, the claimant ~~shall have~~ has a lien upon the crops therein described to the amount of the purchase price of the fuel sold. ~~Such The~~ lien ~~shall have~~ has priority over all other liens except threshing liens, seed liens, farm labor liens, and crop production liens. The register of deeds shall charge a fee of ~~one dollar~~ as provided by section 11-18-05 for the filing of a verified statement perfecting the lien. ~~Such The~~ lien ~~shall~~ must be indexed and filed in the same manner as chattel mortgages are filed and may be satisfied by an instrument similar to a satisfaction of chattel mortgages.

Approved March 26, 1987
Filed March 30, 1987

* NOTE: Section 35-08-04 was also amended by section 18 of House Bill No. 1050, chapter 73.

CHAPTER 156

HOUSE BILL NO. 1420
(Sorensen)

COUNTY OR CITY PROPERTY SALES

AN ACT to create and enact a new section to chapter 11-27, a new section to chapter 40-11, and a new section to chapter 57-28 of the North Dakota Century Code, relating to sale of property by counties or cities; and to amend and reenact sections 11-27-01 and 40-11-04 of the North Dakota Century Code, relating to transfers of property by counties or cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-27-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-27-01. Board of county commissioners authorized to sell property - Private and public sale. The board of county commissioners of any county may dispose of any property, either real or personal, which the county has acquired through purchase, forfeiture, or operation of law other than through tax sale proceedings, ~~in accordance with the provisions of~~ under this chapter. When the property to be disposed of is estimated by the board to be of a value of less than one thousand dollars, it may be sold at private sale upon the proper resolution of the board. In all other cases, ~~such the~~ property may be sold only at public sale or as provided under section 2 of this Act.

SECTION 2. A new section to chapter 11-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of real property by nonexclusive listing agreements. As an alternative to public sale under section 11-27-01, the board of county commissioners may by resolution describe the real property of the county which is to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the county reserves the right to reject any and all offers determined to be insufficient. After adoption of the resolution, the board of county commissioners may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements.

SECTION 3. AMENDMENT. Section 40-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-11-04. Ordinance required for the transfer of property. Every municipality shall enact an ordinance providing a uniform method and procedure for the conveyance, sale, lease, or disposal of personal and real property of the municipality. When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, such the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, such the property may be sold only at public sale or as provided under section 4 of this Act.

SECTION 4. A new section to chapter 40-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of real property by nonexclusive listing agreements. As an alternative to the procedure established under section 40-11-04.1, the governing body of a city may by resolution describe the real property of the city which is to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the city reserves the right to reject any and all offers determined to be insufficient. After adoption of the resolution, the governing body of a city may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements.

SECTION 5. A new section to chapter 57-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

Private sale between annual sales by nonexclusive listing agreements. The board of county commissioners may by resolution engage licensed real estate brokers to attempt to sell parcels of real estate not sold at the annual November sale. The resolution must authorize sale by way of nonexclusive listing agreements; describe the real property to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the county reserves the right to reject any and all offers determined to be insufficient. Real estate that is subject to a special assessment lien for improvements made by a city shall first be offered for sale to the city.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 157

HOUSE BILL NO. 1066
(Legislative Council)
(Interim Transportation Committee)

HIGHWAY HEAVY IMPACT NOTICE

AN ACT to amend and reenact section 11-33-18 of the North Dakota Century Code, relating to county zoning and required notice to the state highway commissioner of construction resulting in heavy transportation system usage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33-18. Board Power of board of county commissioners authorized to issue permits - Appropriate Notification of state highway commissioner - Power of board to appropriate money.

1. The board of county commissioners is empowered to may authorize and provide for the issuance of permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to the provisions of this chapter; and.
2. If a board of county commissioners provides for the issuance of permits, the board shall require the applicant to state whether the structure is reasonably anticipated to have a significant impact on the transportation system. A structure is deemed to have significant impact on the transportation system if, over a period of one year, it will have an average daily usage of at least ten motor vehicles whose gross weight exceeds sixty thousand pounds [27,215.54 kilograms]. The board shall require that, if the structure will have a significant impact on the transportation system, the state highway commissioner be notified and be given an opportunity to comment on the application. However, approval of the state highway commissioner of the proposed structure is not required.

3. The board may establish and collect reasonable fees ~~therefor for permits issued under this section~~. The fees so collected ~~shall~~ must be credited to the general fund of the county.
4. The board of county commissioners ~~is further empowered to~~ may appropriate, out of the general funds of the county, such moneys as may be necessary for the purposes of this chapter.

Approved March 12, 1987
Filed March 16, 1987

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 158

SENATE BILL NO. 2374
(D. Meyer)

PRISON INMATE RECORDS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to the confidentiality of prison inmate records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Certain penitentiary inmates' records confidential. The clinical, behavioral, treatment, medical, and social records and materials of a penitentiary inmate, regardless of source, are confidential and privileged and may not be disclosed directly or indirectly to anyone other than the parole board, a public or private treatment facility, a recognized law enforcement agency, and others entitled by law to receive such information. A state or federal court may order the inspection of such confidential and privileged records and materials, or parts thereof, by individuals or organizations having shown a proper legitimate purpose and reason to inspect such records and materials.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 159

SENATE BILL NO. 2339
(Senators D. Meyer, Lodoen, Heinrich)
(Representative Gorman)

PRISON INDUSTRIES

AN ACT to amend and reenact sections 12-48-03.1 and 12-48-06.1 of the North Dakota Century Code, relating to the operation of prison industries, the sale of prison-made products, and the prison industry advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.1. The director of institutions may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of institutions, is authorized to establish, and engage in, such new prison industries as the director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the North Dakota state farm, and the inmates of the institutions. The warden, with the approval of the director of institutions, may also discontinue existing industries where such discontinuance is deemed necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such industries including the manufacture, sale, or distribution of the produce or products therefrom, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer deemed necessary or of benefit. The Except as provided in subsections 1, 2, and 3, the director of institutions may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products shall be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies, and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such purchase

from the prison is impractical or prohibited by law. The warden shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:

1. All hardwood, fiberesin, upholstered, and metal art work products made in the prison by roughrider industries, or other factory that manufactures the above products, may be purchased directly by state agencies and political subdivisions for use in government-owned or rented buildings and by nonprofit organizations excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All other prison-made hardwood, fiberesin, upholstered, and metal art work products may be sold only through wholesale or retail outlets that possess a valid sales tax permit, or through export firms for sale to international markets.
2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of institutions.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberesin, upholstered, or metal art work products to any state institution or facility operated by the director of institutions.

SECTION 2. AMENDMENT. Section 12-48-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-06.1. Prison industry advisory committee. There is hereby established a prison industry advisory committee which consists of the director of institutions and seven members, who are representative of each type of industry within the prison, and who are appointed by the governor. Meetings of the committee shall be called not less than twice a year by the director of institutions who shall be the chairman of the committee. The appointed members shall be paid mileage and expenses by the prison industry as authorized for state officials and employees.

Approved April 21, 1987
Filed April 27, 1987

CHAPTER 160

SENATE BILL NO. 2194
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

PRISON INDUSTRY EXCHANGES

AN ACT authorizing North Dakota state penitentiary industry to trade, barter, and exchange merchandise, equipment, and services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Prison industry authorized to trade, barter, and exchange merchandise, equipment, and services. Prison industry is authorized to trade, barter, and exchange merchandise, equipment, and services with any state agency if such is in the best interest of the prison industry and approved by the warden and the director of institutions.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 161

SENATE BILL NO. 2417
(Senator Maxson)
(Representative Dalrymple)

PAROLE AGREEMENT VIOLATIONS

AN ACT to amend and reenact subsection 6 of section 12-59-15 of the North Dakota Century Code, relating to the authority of the parole board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 12-59-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. If the hearing officer determines there is probable cause, the parolee shall be returned to the penitentiary or state farm, transferred to a county jail or the state hospital, or released from actual custody on the terms of the parole agreement, pending a final revocation hearing before the parole board. If the board determines, at the final revocation hearing, that the parolee has violated the conditions of the parole agreement, it may order that the parolee be recommitted to the penitentiary or state farm, as provided in ~~his~~ the parolee's sentence, to serve in custody, in the penitentiary or state farm, all or part of the remaining time of the sentence that has not been served in custody in the penitentiary or state farm.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 162

HOUSE BILL NO. 1051
(Legislative Council)
(Interim Law Enforcement Committee)

CRIMINAL HISTORY RECORD INFORMATION

AN ACT to provide for the reporting, collecting, maintaining, and disseminating of criminal history record information; to amend and reenact section 12-60-07 of the North Dakota Century Code, relating to the powers and duties of the bureau of criminal investigation; to repeal sections 12-60-10, 12-60-11, 12-60-12, 12-60-15, and 12-60-16 of the North Dakota Century Code, relating to the bureau of criminal investigation, fingerprinting arrestees, furnishing information, and reporting transfer, release or other disposition of arrestees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 10 of this Act, unless the context otherwise requires:

1. "Bureau" means the bureau of criminal investigation.
2. "Criminal history record information" includes data concerning a reportable event which the bureau is required or permitted to retain under sections 1 through 10 of this Act.
3. "Court" means the supreme court, district courts, county courts, and municipal courts of the North Dakota judicial system.
4. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.
5. "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

- a. The transmittal of the information within a criminal justice agency.
 - b. The reporting of the information as required by section 2 of this Act.
 - c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.
6. "Noncriminal justice agency" means an entity that is not a criminal justice agency.
 7. "Record subject" means the person who is the primary subject of a criminal history record. The term includes any representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.
 8. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 2 of this Act. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

SECTION 2. Reportable events. Except as otherwise provided in sections 1 through 10 of this Act, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 4 of this Act. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.
2. The state's attorney of each county shall notify the bureau of all charges filed, including all those added

after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.

3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the state's attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.
4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:
 - a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;
 - b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and
 - c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.
5. The North Dakota state penitentiary, board of pardons, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death, must also be furnished.

SECTION 3. Rulemaking required. The attorney general shall adopt appropriate rules for criminal justice agencies regarding the reporting, collecting, maintaining, and disseminating of criminal history record information. The rules must include:

1. Policies and procedures to be used by criminal justice agencies regarding:

- a. Security of criminal history record information.
 - b. Inspection and challenging of criminal history record information by a record subject.
 - c. Auditing of criminal history record information to ensure that it is accurate and complete and that it is reported, collected, maintained, and disseminated in accordance with sections 1 through 10 of this Act.
 - d. Development and content of agreements between the bureau and criminal justice agencies providing for reporting of and access to criminal history record information.
 - e. Use of criminal history record information for the purpose of research and statistical analysis of criminal activity.
 - f. Criteria under which criminal history records are purged or sealed.
2. Reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.
 3. Time requirements for reporting criminal history record information to the bureau.

SECTION 4. Reportable offenses. Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following misdemeanor offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1 and 19-03.2, and in section 12-47-21.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in sections 53-06.1-16 and 53-06.1-16.1.
6. Class A misdemeanor offenses in title 62.1.

SECTION 5. Exchange of criminal history record information among criminal justice agencies and the courts. The bureau and other criminal justice agencies shall disclose criminal history record information:

1. To a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees.
2. To a court, on request, to aid in a decision concerning sentence, probation, or release pending trial or appeal.
3. Pursuant to a judicial, legislative, or administrative agency subpoena issued in this state.
4. As otherwise expressly required by law.

SECTION 6. Dissemination to parties not described in section 5. Only the bureau may disseminate criminal history record information to parties not described in section 5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
 - a. The name of the requester.
 - b. The name of the record subject.
 - c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

SECTION 7. Prohibited dissemination. If dissemination is prohibited under section 6, or there is no information, the bureau shall provide the following answer to the requester: "No information is available because either no information exists or dissemination is prohibited."

SECTION 8. Required disclosure of certain dissemination. If the bureau disseminates information under section 6, unless the request was accompanied by an authorization on forms prescribed by the bureau and signed by the record subject, the bureau shall mail notice of that dissemination to the record subject at the last known address of the record subject.

SECTION 9. Fee for record check. The bureau shall impose a fee of twenty dollars for a record check conducted for a noncriminal justice agency that is not also a court.

SECTION 10. Penalty. Any willful violation as defined in section 12.1-02-02 of any provision of sections 1 through 9 of this Act relating to reporting or disseminating criminal history record information is a class A misdemeanor.

SECTION 11. AMENDMENT. Section 12-60-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-07. Powers and, duties, and functions of the bureau. The duties and responsibilities of the bureau shall be-

1. ~~To~~ The bureau shall cooperate with and assist the criminal bureau of the department of justice at Washington, D. C., and similar departments in other states in establishing and carrying on a complete system of criminal identification.
2. ~~To~~ The bureau shall cooperate with and assist all judges, state's attorneys, sheriffs, chiefs of police, and all other law enforcement officers of this or any other state and of the federal government in establishing such system of criminal identification.
3. ~~To file for record the fingerprint impressions of every person confined in any penitentiary or jail when such person is suspected of having committed a felony or of being a fugitive from justice, and to file such other information as they may receive from the law enforcement officers of this or any other state, or from the federal government~~ The bureau is the state central repository for the collection, maintenance, and dissemination of criminal history record information.
4. ~~To~~ The bureau shall assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime.
5. When called upon by any state's attorney, sheriff, police officer, marshal, or other peace officers, the superintendent, chief of the bureau, and their investigators may assist, aid, and cooperate in the investigation, apprehension, arrest, detention, and

conviction of all persons believed to be guilty of committing any felony within the state.

6. ~~To~~ The bureau shall perform such other duties in the investigation, detection, apprehension, prosecution, or suppression of crimes as may be assigned by the attorney general in the performance of ~~his~~ the attorney general's duties.
7. ~~To~~ The bureau shall provide assistance from time to time in conducting police schools for training peace officers in their powers and duties, and in the use of approved methods for detection, identification, and apprehension of criminals and ~~to~~ require attendance at such police schools.
8. ~~To~~ accumulate, keep, and maintain a file for the identification of persons convicted of issuing false and fraudulent checks, no account checks, and nonsufficient funds checks, and to aid local law enforcement officials in the detection, apprehension, and conviction of said persons.
- 9- ~~To~~ The bureau shall perform the inspection and enforcement duties for the attorney general's licensing department.
- ~~10-~~ 9. ~~To~~ The bureau shall detect and apprehend persons illegally possessing or disposing of drugs.

SECTION 12. REPEAL. Sections 12-60-10, 12-60-11, 12-60-12, 12-60-15, and 12-60-16 of the North Dakota Century Code are hereby repealed.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 163

SENATE BILL NO. 2365
(Senator Maixner)
(Representative Rydell)

DOMESTIC VIOLENCE PROCEDURES

AN ACT to provide arrest procedures, guidelines, and training for law enforcement officers in handling incidents of domestic violence, and protection by judicial intervention for victims of domestic violence; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, on the complaining family or household members.
2. "Family or household member" means spouses, former spouses, parents, persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they are or have been married or have lived together at any time.
3. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations of violations of law.

SECTION 2. Arrest procedures.

1. Whenever a peace officer has probable cause to believe that a person has committed a crime involving domestic violence, the peace officer may arrest the person and charge the person with the appropriate crime. The decision to arrest and charge the person may not be dependent on the specific consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim.

2. A peace officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the peace officer shall evaluate each complaint separately to determine whether to seek an arrest warrant.

SECTION 3. Reports. A peace officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The peace officer shall submit the report to the peace officer's supervisor or to any other person to whom the peace officer is required to submit similar reports.

SECTION 4. Order prohibiting contact.

1. If a person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial, the court authorizing the release of the person shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the person from having contact with the victim, an order prohibiting the person from having contact with the victim. The order must contain the court's directives and must inform the person that any violation of the order constitutes a criminal offense. The court shall provide a copy of the order to the victim. The court shall determine at the time of the person's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section prior to the time the person is charged, the order expires at the person's arraignment or within seventy-two hours of issuance if charges against the person are not filed.
2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court may require that the person surrender any firearm or dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which the person resides for safekeeping.
3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order on or before the next business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system

available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

SECTION 5. Law enforcement guidelines and training.

1. On or before July 1, 1988, each law enforcement agency in the state shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by peace officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out the provisions of this Act.
2. The peace officers standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for peace officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

SECTION 6. Penalty. A person who willfully violates a court order issued pursuant to section 4 of this Act is guilty of a class A misdemeanor.

Approved April 14, 1987
Filed April 15, 1987

CRIMINAL CODE

CHAPTER 164

HOUSE BILL NO. 1038
(Legislative Council)
(Interim Government Administration Committee)

COMPUTER FRAUD AND CRIME

AN ACT to amend and reenact subsection 3 of section 12.1-06.1-01 and section 12.1-06.1-08 of the North Dakota Century Code, relating to computer fraud and computer crime classifications; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-06.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. For the purposes of section 12.1-06.1-08:

- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
- b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities which that are connected or related to such a device in a system or network.
- c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which

- permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
 - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
 - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, ~~credit eard~~, marketable security, or any other written instrument which is transferable for value.
 - h. "Property" ~~means~~ includes financial instruments, information, ~~including~~ electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and ~~anything~~ any other tangible or intangible item of value.
 - i. "Services" includes computer time, data processing, and storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

SECTION 2. AMENDMENT. Section 12.1-06.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-06.1-08. Computer fraud - Computer crime - Classification.

1. A person ~~who~~ commits computer fraud by accessing, gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, or destroying without authorization any computer, computer system, computer network, or any part of such computer, system, or network, without authorization, and with the intent to devise or execute any scheme or artifice to defraud or, deceive, prevent the authorized use of, or control property or services by means of false or fraudulent pretenses, representations, or promises. A person who commits computer fraud is guilty of a class B C felony.
2. A person ~~who~~ commits computer ~~fraud~~ crime by intentionally and either in excess of authorization given or without

authorization ~~accessing~~ gaining or attempting to gain access to, altering, damaging, ~~or~~ modifying, copying, disclosing, taking possession of, destroying, or preventing the authorized use of any computer, computer system, or computer network, or any computer software, program, or data contained in such computer, computer system, or computer network. A person who commits computer crime is guilty of a class E felony A misdemeanor.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 165

SENATE BILL NO. 2449
(Mutch)

RACKETEERING

AN ACT to create and enact a new subdivision to subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code, relating to the definition of a pattern of racketeering activity; and to amend and reenact subsections 1 and 2 of section 12.1-06.1-03, section 12.1-06.1-04, subsections 1, 2, 4, and 5 of section 12.1-06.1-05, subsection 1 of section 12.1-06.1-06, and subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code, relating to racketeer-influenced and corrupt organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this Act and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A person is in illegal control of an enterprise if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
2. A person is illegally conducting an enterprise if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.

SECTION 3. AMENDMENT. Section 12.1-06.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-06.1-04. Judicial powers over racketeering criminal cases. During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that such racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that such racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

SECTION 4. AMENDMENT. Subsections 1, 2, 4, and 5 of section 12.1-06.1-05 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-03.
2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-03 after making provision for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders.
4. Following a determination of liability orders may include:
 - a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.
 - b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

- c. Ordering dissolution or reorganization of any enterprise.
- d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-03.
- e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon such application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county which brings the action.
- f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:
- (1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-03.
 - (2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise which a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-03.
 - (3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.
- g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court

that such racketeering offense has occurred as a part of a pattern of racketeering activity.

5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:
 - a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-03.
 - b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise which a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-03.
 - c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.

SECTION 5. AMENDMENT. Subsection 1 of section 12.1-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an offense included in the definition of racketeering if such offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 12.1-06.1-07 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, provided the person requesting the information signs and submits a sworn statement to the custodian that the request is made in order to investigate a pattern of racketeering activity or a violation of section 12.1-06.1-03. Records may be removed from the

premises of the financial institution only for the purpose of copying the records and must be returned within forty-eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general is prohibited from using or releasing such information except in the proper discharge of official duties. The furnishing of records in compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.

2. The attorney general or the authorized state's attorney may petition the district court for enforcement of this section in the event of noncompliance with the request for inspection. Enforcement shall be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of an offense included in the definition a pattern of racketeering activity or a violation of section 12.1-06.1-03.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 166

HOUSE BILL NO. 1557
(Shockman, Melby, Rice, Marks, D. Olsen)

OFFENSES AGAINST UNBORN

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to criminal offenses committed against unborn children; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new chapter to title 12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this Act:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Person" does not include the pregnant woman.
3. "Unborn child" means the conceived but not yet born offspring of a human being, which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive.

Murder of an unborn child.

1. A person is guilty of murder of an unborn child, a class AA felony, if the person:
 - a. Intentionally or knowingly causes the death of an unborn child;
 - b. Causes the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman; or
 - c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery,

burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person, or another participant, if any, causes the death of an unborn child; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

- (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and
- (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon that under the circumstances indicated a readiness to inflict serious bodily injury; and
- (3) Reasonably believed that no other participant was armed with such a weapon; and
- (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder of an unborn child, a class A felony, if the person causes the death of an unborn child under circumstances which would be class AA murder, except that the person causes the death of the unborn child under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in the person's situation under the circumstances as the person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

Manslaughter of an unborn child. A person is guilty of manslaughter of an unborn child, a class B felony, if the person recklessly causes the death of an unborn child.

Negligent homicide of an unborn child. A person is guilty of negligent homicide of an unborn child, a class C felony, if the person negligently causes the death of an unborn child.

Aggravated assault of an unborn child. A person is guilty of assault of an unborn child, a class C felony, if that person

willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child.

Assault of an unborn child. A person is guilty of assault of an unborn child, a class A misdemeanor, if the person willfully assaults a pregnant woman and inflicts bodily injury on an unborn child.

Exception. This Act does not apply to acts or omissions that cause the death or injury of an unborn child if those acts or omissions are committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented, nor does it apply to acts or omissions that are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment performed by or under the supervision of a licensed physician.

Other convictions not prohibited. A prosecution for or conviction under this Act is not a bar to conviction of or punishment for any other offense committed by a person as part of the same conduct.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 167

HOUSE BILL NO. 1221
 (Committee on Judiciary)
 (At the request of the Attorney General)

SEX OFFENSES

AN ACT to amend and reenact section 12.1-20-01 and subsection 1 of section 12.1-20-09 of the North Dakota Century Code, relating to the "marital rape" defense for all sexual assaults, the ninety-day statute of limitations for both adult and minor victims, and adultery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-01. General provisions.

- ~~1-~~ In sections 12.1-20-03 through 12.1-20-08:
- ~~a-~~ 1. When the criminality of conduct depends on a child's being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.
- ~~b-~~ 2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.
- ~~2-~~ In sections ~~12-1-20-04~~ through ~~12-1-20-09~~, an offense ~~excludes conduct with an actor's spouse. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation, a temporary or permanent adult abuse protection order, or an interim order issued in connection with a divorce or separation action. Where an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as an accomplice in an offense which he causes another person to perform.~~

- 3- If the alleged victim was an adult, not otherwise incompetent to make complaint, no prosecution may be instituted or maintained under sections 12-1-20-03 through 12-1-20-08 or section 12-1-20-12 unless the alleged offense was brought to the notice of public authority within three months of its occurrence.
- 4- If the alleged victim was a minor or otherwise incompetent to make complaint, no prosecution may be instituted or maintained under sections 12-1-20-03 through 12-1-20-08 or section 12-1-20-12 unless the alleged offense was brought to the notice of public authority within three months after a parent, guardian, or other competent person specifically interested in the victim, learned of the offense. The three-month limitation does not begin to apply unless the person learning of the offense is someone other than the offender or a spouse, child, sibling, or parent of the offender.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-20-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A married person is guilty of a class A misdemeanor if he or she engages in a sexual act with another person, who is not his or her spouse.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 168

SENATE BILL NO. 2235
(Committee on Judiciary)
(At the request of the Attorney General)

DATE RAPE PENALTIES

AN ACT to amend and reenact subsection 3 of section 12.1-20-03 of the North Dakota Century Code, relating to the removal of the "voluntary companion" language as a consideration in the offense grading language of the crime of gross sexual imposition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-20-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An offense under this section is a class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if his conduct violates subdivision a or d of subsection 1, ~~or if the victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties.~~ Otherwise the offense is a class B felony.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 169

HOUSE BILL NO. 1509
(Representatives Starke, Opedahl, Rydell)
(Senators J. Meyer, Wright)

SEXUAL EXPLOITATION BY THERAPIST

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to sexual exploitation by a therapist; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sexual exploitation by therapist - Definitions - Penalty. Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, chemical dependency counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

SECTION 2. **EMERGENCY.** This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 170

HOUSE BILL NO. 1150
(Committee on Social Services and Veterans Affairs)
(At the request of the Governor and the Attorney General)

GUARDIAN AD LITEM IN SEX OFFENSES

AN ACT to provide for the appointment of guardians ad litem in prosecution of sex offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Appointment of a guardian ad litem in prosecution for sex offenses. A minor who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, or section 12.1-20-11 may, at the discretion of the court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the child. A person who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in county court pursuant to subsection 7 of section 27-07.1-17.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 171

SENATE BILL NO. 2241
(Committee on Political Subdivisions)
(At the request of the Attorney General)

GAMBLING APPARATUS

AN ACT to amend and reenact subsection 3 of section 12.1-28-01 of the North Dakota Century Code, relating to the definition of gambling apparatus.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-28-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Gambling apparatus" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in section ~~53-03-01~~ 53-04-01.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 172

HOUSE BILL NO. 1242
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

ADOPTION AND PARENTAL RIGHTS

AN ACT to create and enact a new section to title 12.1 and a new chapter to title 14 of the North Dakota Century Code, relating to relinquishment of children to identified adoptive parents and the crime of child procurement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to title 12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Child procurement - Penalty. Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption.

SECTION 2. A new chapter to title 14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Birth parent" means the woman who gave birth to a child, any man alleged by that woman to be the biological father of that child, or any man presumed by law or judicially determined to be the biological father of that child.
2. "Child-placing agency" means an agency licensed under chapter 50-12.
3. "Court" means the district court of this state.
4. "Department" means the department of human services.

5. "Identified adoptive parent" means the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child.

Petition for relinquishment - Filing - Written consent required.

1. A birth parent or identified adoptive parent may file with the court a petition to relinquish parental rights with respect to a minor child to the identified adoptive parent. The written consent of any birth parent to the adoption must accompany the petition. The written consent of the identified adoptive parent to assume custody must be filed with the petition. The petition and all documents must be served upon the department, nonpetitioning birth parents, and identified adoptive parent.
2. A petition for relinquishment, together with the written consent to adoption, may be filed before the birth of the child to whom the petition relates.

Petition for relinquishment - Hearing - Temporary custody order - Notice - Order for relinquishment.

1. The court shall set a time and place for a hearing on the petition for relinquishment. A guardian ad litem must be appointed for the child at least seven days prior to the hearing. The hearing may not be held sooner than forty-eight hours after the child's birth or the signing of all necessary consents to adoption, whichever is later. If a preplacement report is filed with the petition, the court may enter a temporary order placing the child with the identified adoptive parent pending the hearing.
2. Notice of the hearing must be served on or by any birth parent, the department, the child-placing agency, the identified adoptive parent, and the guardian ad litem.
3. The court may require any birth parent to appear personally and enter consent to the adoption on the record. The court shall determine that any written consent has been validly executed. If the court determines it is in the best interests of the child, the court shall approve the petition for relinquishment.
4. If the court approves the petition and determines, based upon the preplacement study and other evidence presented at the hearing, that placement with the identified adoptive parent is in the best interests of the child, the court shall order that the child be placed with the identified adoptive parent pending adoption. The identified adoptive parent is financially responsible for the support of the child until further order of the court.

The court shall also enter an order terminating the relationship of the birth parent and the child.

Report of child-placing agency. Prior to a hearing under this chapter, the preplacement adoptive home study report of a child-placing agency must be filed with the court. The child-placing agency shall serve a copy of the report upon the birth parent, the identified adoptive parent, the guardian ad litem, and the department at least seven days prior to the hearing. The report must include the following:

1. A recommendation as to whether the home of the identified adoptive parent is a suitable home for the placement of the child.
2. An assessment of how the identified adoptive parent's emotional maturity, finances, health, relationships, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.
3. The medical and social history of the birth parent including an assessment regarding the birth parent's understanding and acceptance of the proceedings.
4. If the child has been born prior to the filing of the report, a medical and developmental history of the child.

Report of agreements and disbursements. Prior to a hearing under this chapter, a report of agreements and disbursements must be filed with the court and served upon the department. The report must include the following:

1. A statement of all agreements, whether oral or written, entered into between any of the parties to an action under this chapter, which relate in any way to the future conduct of any party with respect to the child. If oral agreements are reported, the substance of such agreements must be set forth in the report and a copy of the report must be served on all parties to the oral agreement. Copies of all written agreements must be attached to the report.
2. A full accounting in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parent in connection with proceedings under this chapter. The report must show any expenses incurred in connection with:
 - a. The birth of the child.
 - b. Placement of the child with the identified adoptive parent.

- c. Medical or hospital care received by the birth parent or by the child prior to or after the child's birth.
 - d. Services relating to the petition for relinquishment or the placement of the child which were received by or on behalf of a birth parent, identified adoptive parent, or any other person.
3. A statement of each person furnishing information contained in the report by which that person attests to the correctness and truthfulness of the information furnished.

Fees and charges. Reasonable fees may be charged for professional services relating to the petition for relinquishment, placement of the child, and other pre-adoption services, medical care or services, prenatal costs, foster care, or other reasonable items of cost or expense if reflected in a report of agreements and disbursements filed under this Act and approved by the court.

Adoption petition - Time limit for filing. Within ninety days after entry of an order for relinquishment under this chapter, the identified adoptive parent shall file a petition for adoption under chapter 14-15. If no petition for adoption is filed within ninety days, the department shall notify the court. The court shall then set a hearing to determine whether the child's placement should be changed.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 173

HOUSE BILL NO. 1607
(Rydell)

RESTITUTION OF REPARATION HEARINGS

AN ACT to amend and reenact subsection 1 of section 12.1-32-08 of the North Dakota Century Code, relating to hearing prior to a restitution or reparation order.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to ~~fruits of~~ those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the

prescribed treatment costs for a victim of a sexual offense as defined in section 12.1-20 and 12.1-27.2.

- b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may shall, if unless the court so directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 174

HOUSE BILL NO. 1190
(Committee on Judiciary)
(At the request of the Governor and the Attorney General)

VICTIM AND WITNESS RIGHTS

AN ACT to provide for the fair treatment of victims and witnesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Legislative intent. In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislative assembly declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this Act to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

SECTION 2. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no account checks; all violations of chapters 12.1-17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.
3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.

4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state farm, state penitentiary, state hospital, or any other in-patient mental health or treatment facility to which a criminal defendant may be sentenced or referred.
5. "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.
6. "Family member" includes a spouse, child, sibling, parent, grandparent, legal guardian, or custodian of a victim.
7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
8. "Victim" means a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.
9. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

SECTION 3. Fair treatment standards for victims and witnesses.

Victims and witnesses of crime must be afforded the following rights where applicable:

1. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed.
2. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.

3. Notice of pretrial release. Victims must be given prompt notice by the law enforcement agency that has made an arrest in any case involving a crime of violence of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released prior to an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, that shall provide the notice. Victims and witnesses of crimes of violence must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.
4. Notice as to victims and witnesses participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims and witnesses shall be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and witnesses must provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.
5. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hot lines, social service agencies, and domestic violence programs. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of the Crime Victims Reparations Act as provided in chapter 65-13.
6. Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the

- criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
7. Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.
 8. Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.
 9. Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.
 10. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court.
 11. Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.

12. Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.
13. Notice as to scheduling of hearing. Victims must be informed by the prosecuting attorney of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a sentencing hearing. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.
14. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.
15. Notice of final disposition and parole procedures. Victims and witnesses must be informed by the prosecuting attorney of the final disposition of any criminal case. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon board of the victim's address in order for the victim to receive further information under other provisions of this chapter.
16. Prompt notice of custodial release. Victims must be informed by the appropriate custodial authority whenever a criminal defendant receives a temporary, provisional, or

final release from custody or whenever the defendant escapes from custody. Notification must include the transfer of the defendant to a work-release program, a community residential program, or transfer to a mental health facility. All notices to the victim concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.

17. Participation in parole board and pardon board decision. Victims may submit a written statement for consideration by the parole board or pardon board prior to the parole board or pardon board taking any action on a defendant's request for parole or pardon. Victims of violent crimes may at the discretion of the parole board or pardon board personally appear and address the parole board or pardon board. Notice must be given by the parole board or pardon board informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or pardon board and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon. Notice must be given within a reasonable time after the parole board or pardon board reaches its decision but in any event prior to the parolee's or pardoned prisoner's release from custody.

SECTION 4. Responsibilities of victims and witnesses. Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon board, and court, where appropriate, of any change of address. The address information provided to these persons must be kept confidential.

SECTION 5. Victim and witness services. Each prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in this Act. Those services include all of the following:

1. Court appearance notification services, including cancellations of appearances.

2. Informational services relative to the availability of the collection of witness fees, victim compensation, or restitution.
3. Escort and other transportation services related to the investigation or prosecution of the case, if necessary.
4. Case process notification services.
5. Employer intercession services.
6. Expedited return of property services.
7. Protection services.
8. Family support services, including child and other dependent care services.
9. Waiting facilities.
10. Social service and other public or private agency referrals.

SECTION 6. Cause of action for damages or injunctive relief. Nothing in this Act may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a victim under this Act is not grounds for the defendant to seek to have the conviction or sentence set aside. This Act does not limit any rights to which victims and witnesses of crime are otherwise entitled.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 175

HOUSE BILL NO. 1227 (Committee on Judiciary)

(At the request of the Governor and the Attorney General)

VICTIM AND WITNESS TREATMENT

AN ACT to provide for child victim and witness fair treatment standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Legislative intent. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and fair treatment than that usually afforded to adults. The legislature intends, in this Act, to provide these children with additional rights and protections during their involvement with the criminal justice system.

SECTION 2. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.
2. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
3. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.
4. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
5. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.
6. "Victim" means a child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.

7. "Witness" means any child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

SECTION 3. Additional services. In addition to all rights afforded to victims and witnesses by law, state's attorneys are encouraged to provide the following additional services to children who are involved in criminal proceedings as victims or witnesses:

1. Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.
2. Advice to the court concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.
3. Information about, and referrals to, appropriate social services programs to assist the child and the child's family members in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

SECTION 4. Public record. In order to protect the child from possible trauma resulting from publicity, the name of the child victim and identifying biographical information may not appear on the indictment or any other public record. Instead, a Jane Doe or Joe Doe designation must appear in all public records. Sealed confidential records containing the child's name and necessary biographical information must be kept in order to ensure that no defendant is charged twice.

SECTION 5. Limits on interviews. The prosecuting attorney, and appropriate law enforcement personnel shall, to the extent possible, protect the child victim or child witness from the psychological damage of repeated interrogation while preserving the rights of the public, the victim, and the person charged with the violation.

SECTION 6. Prompt disposition. In all criminal cases and juvenile proceedings involving a child victim or witness, the court and the state's attorney shall take appropriate action to ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

SECTION 7. Cause of action for damages and injunctive relief. Nothing in this Act may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a child victim or witness under this Act is not grounds for the defendant to seek to have the conviction or sentence set aside. This Act does not limit any rights to which child victims and witnesses of crime are otherwise entitled.

Approved April 1, 1987
Filed April 2, 1987

DOMESTIC RELATIONS AND PERSONS

CHAPTER 176

SENATE BILL NO. 2245
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

SUPPORT PAYMENT TRANSMITTAL

AN ACT to amend and reenact subsection 1 of section 14-08-07 of the North Dakota Century Code, relating to transmittal of support payments by clerks of court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-08-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court shall provide in its decree that such payments be paid to the clerk of court as trustee for remittance to the recipient or person or public agency providing support for such recipient. The clerk of court shall remit such payments within ten working days of receipt. The clerk of court shall maintain records listing the amount of the payments, the date when the payments shall be made, the names and addresses of the parties subject to the decree, and any other information necessary for the proper administration of the decree. Upon the filing with the clerk of court of notice of the assignment of a recipient's support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651, et seq., as amended]. The parties subject to the decree shall immediately inform the clerk of court of any change of address or change of any other condition which may affect the proper administration of sections 14-08-07 through 14-08-10. Whenever there is failure to make the payments as required, the clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation shall be served on that person as provided by the North Dakota Rules of Civil Procedure.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 177

SENATE BILL NO. 2366
(Senator Maixner)
(Representative Rydell)

ADULT ABUSE PROTECTION ORDERS

AN ACT to create and enact a new subsection to section 27-07.1-17 of the North Dakota Century Code, relating to the jurisdiction of the county court; and to amend and reenact subsection 1 of section 14-07.1-02 and section 14-07.1-08 of the North Dakota Century Code, relating to actions for an adult abuse protection order.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-07.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought in district court or county court by any spouse, family member, former spouse, parent, child, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of an adult abuse protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

SECTION 2. AMENDMENT. Section 14-07.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or

others from abuse. Immediate and present danger of abuse to the applicant or others shall constitute good cause for purposes of this section. Any order issued under this section shall expire seventy-two hours after its issuance, unless continued by the ~~district~~ court, or the ~~issuing court~~ local magistrate in the event of continuing unavailability of the ~~district~~ court. At that time, the applicant may seek a temporary order from the ~~district~~ court. Any order issued under this section and any documentation in support thereof shall be immediately certified to the ~~district~~ court. Such certification to the ~~district~~ court shall have the effect of commencing proceedings under section 14-07.1-02 and invoking the other provisions of this chapter.

SECTION 3. A new subsection to section 27-07.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Adult abuse protection order proceedings. The county court has concurrent jurisdiction with the district court pursuant to chapter 14-07.1.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 178

HOUSE BILL NO. 1151
(Committee on Social Services and Veterans Affairs)
(At the request of the Governor and the Attorney General)

GUARDIAN AD LITEM IN CUSTODY ACTIONS

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the appointment of a guardian ad litem to represent a minor in an action for a protection order involving custody, support or visitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appointment of guardian ad litem for minor. The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time prior to the full hearing. The role of the guardian ad litem shall consist of investigation and making a recommendation and report to the court. At no time shall the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem shall expire immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 179

SENATE BILL NO. 2367
(Senator Maixner)
(Representative Rydell)

DOMESTIC ASSAULT ARRESTS

AN ACT to amend and reenact sections 14-07.1-06 and 29-06-15 of the North Dakota Century Code, relating to arrest without warrant for domestic assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-06. Penalty for violation of a protection order - Arrest without warrant. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal contempt of court subject to penalties therefor. A peace officer may arrest any person without a warrant if:

1. The person has committed the offense of violating a protection order, whether or not the violation was committed in the presence of the officer; or
2. The peace officer has probable cause to believe the person, within the preceeding four hours of the ascertainment of probable cause, has assaulted that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

A peace officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 2. AMENDMENT. Section 29-06-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-06-15. Arrest without warrant - Peace officer - Officer in the United States customs service or the immigration and naturalization service.

1. A peace officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. If the peace officer has probable cause to believe the person, within the ~~preceeding~~ four hours of the ascertainment of probable cause, has assaulted ~~his or her~~ that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.
2. An officer of the United States customs service or the immigration and naturalization service, without a warrant, may arrest a person if all of the following circumstances exist:
 - a. The officer is on duty.

- b. One or more of the following situations exist:
- (1) The person commits an assault or other crime, defined and punishable under chapter 12.1-17, against the officer or against any other person in the presence of the officer.
 - (2) The officer has reasonable cause to believe that a crime, as defined in paragraph 1, has been committed and reasonable cause to believe that the person to be arrested has committed it.
 - (3) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it.
 - (4) The officer has received positive information from an authoritative source that a peace officer holds a warrant for the person's arrest.
- c. The officer has received training in the laws of this state equivalent to the training provided for a police officer under chapter 12-62.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 180

SENATE BILL NO. 2303
(Senators Waldera, Mathern)
(Representatives J. DeMers, Rydell)

ADULT ABUSE REPORTS

AN ACT to provide immunity from liability for reporting, assisting, or providing services with respect to abused, neglected, or exploited adults; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Immunity from liability - Penalty for false reports. Any person, other than the alleged violator, participating in good faith in the making of a report, assisting in an investigation, or providing preventive or remedial services with respect to the abuse, neglect, or exploitation of adults who are unable to protect their own interests, is immune from any civil or criminal liability that might otherwise result from those actions. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or causes a false report to be made pursuant to this section is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 181

SENATE BILL NO. 2432
(Senators Stenehjem, Heinrich)
(Representatives Rydell, J. DeMers)

CHILD SUPPORT INCOME WITHHOLDING

AN ACT to create and enact a new section to chapter 14-08.1 of the North Dakota Century Code, relating to child support orders; to amend and reenact five new sections to chapter 14-09 of the North Dakota Century Code, as created by section 1, section 3, section 5, subsections 3 and 8 of section 7, and section 13 of House Bill No. 1903, as approved by the fiftieth legislative assembly, relating to income withholding for the enforcement of child support obligations; to amend and reenact section 14-09-09.6 and subsection 3 of section 57-38.3-02 of the North Dakota Century Code, relating to voluntary income withholding and set off of debts owed to the state against income tax refunds; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, including the ability to be entered in the judgment book pursuant to rule 58 of the North Dakota Rules of Civil Procedure and otherwise enforced as a judgment;
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.

2. Failure to comply with the provisions of a judgment or order of the court for the support of a child may be punished as civil contempt. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

SECTION 2. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 1 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Definitions. For the purposes of this Act, unless the context or subject matter otherwise requires:

1. "Delinquent" means not paid in full within fifteen days of the date the child support was ordered to be paid a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
2. "Disposable income" means gross income less deductions required by law for taxes and social security.
3. "Income" means any form of payment, regardless of source, owed to an obligor, including, but not limited to, an earned, unearned, taxable or nontaxable income, ~~workman's~~ workmen's compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
4. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
5. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
6. "Obligor" means any person owing a duty of support.
7. "Public authority" means the department of human services in execution of its duties pursuant to subsection 12 of section 50-09-02.

SECTION 3. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 3 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Provision of notice of impact of act to obligors. Each ~~decree~~ ~~or~~ judgment ~~or~~ order issued by a court in this state which includes an order for support of minor children must include a statement that a delinquency in payment of the support due will result in an income withholding order being issued in accordance with this Act.

SECTION 4. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 5 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Hearing upon obligor's request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 4 of this Act, the court shall hold a hearing within ten working days after the date of the request. If at the hearing the obligor establishes that there has been a mistake in the identity of the obligor, ~~or excusable neglect beyond the control of the obligor~~, the court may order that no income withholding order issue. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld. In the absence of a finding of a mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 4 of this Act may not be the basis for an order that no income withholding order issue.
2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

SECTION 5. AMENDMENT. Subsections 3 and 8 of the new section to chapter 14-09 of the North Dakota Century Code as created by section 7 of House Bill No. 1903, as approved by the fiftieth legislative assembly, are hereby amended and reenacted to read as follows:

3. That the amount to be withheld may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.

8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14 15 of this Act.

SECTION 6. AMENDMENT. The new section to chapter 14-09 of the North Dakota Century Code as created by section 13 of House Bill No. 1903, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Interstate income withholding - Form - Service on income payor - Termination of order. The provisions of sections 6 through 8 and section 14 15 of this Act are applicable to income withholding orders issued at the request of another state made pursuant to section 10 of this Act.

SECTION 7. AMENDMENT. Section 14-09-09.6 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.6. Voluntary wage assignment income withholding for support - Definitions-- Limitations.

1. In this section, unless the context or subject matter otherwise requires-
 - a- "Employer" means an individual or entity which has a duty to pay wages to an obligor, whether or not an employer-employee relationship exists, and includes the state and federal governments and the political subdivisions of the state.
 - b- "Wage" means any form of earned income, whether commissions, earnings, salaries, pensions, annuities, retirement benefits, return of contributions, draws, shares, profits, bonuses, dividends, or otherwise, whether rendered in cash or in-kind, and specifically includes benefit payments from insurance policies as well as all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.
- 2- An obligor may execute a voluntary assignment of document voluntarily authorizing income withholding from current or future wages income due the obligor from an employer income payor in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An assignment income withholding authorization made under this section is binding on the employer income payor one week after service upon the employer income payor by personal service or by certified mail of a true copy of the executed assignment income withholding authorization. The employer income payor shall deduct the sum or sums specified and pay them as specified by the assignment income withholding authorization and any applicable

imposition of a support obligation by a court. In addition, the employer income payor may deduct a fee of one dollar per month to cover the employer's expense involved in holding and transmitting the assignment from the obligor's income to cover expenses involved in transmitting payment. Compliance by an employer income payor with an assignment income withholding authorization issued under this section discharges the employer's income payor's liability to the obligor for that portion of the obligor-employee's wages obligor's income. The employer income payor may not use the assignment income withholding authorization as a basis for any disciplinary action against the obligor.

SECTION 8. AMENDMENT. Subsection 3 of section 57-38.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Debt" means any liquidated sum due and owing, or required to be collected by, any claimant agency which has accrued through contract, subrogation, tort, or operation of law, regardless of whether there is an outstanding judgment for that sum.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 182

HOUSE BILL NO. 1535
(Representatives O'Shea, Hill)
(Senators Keller, Freborg)

CHILD CUSTODY INVESTIGATION COSTS

AN ACT to create and enact a new subsection to section 50-01-09 of the North Dakota Century Code, relating to the duties of a county social service board; and to amend and reenact section 14-09-06.3 of the North Dakota Century Code, relating to investigative reports and the assessment of costs in contested child custody proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-06.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-06.3. Custody investigations and reports - Costs.

1. In contested custody proceedings the court may, upon the request of either party, or, upon its own motion, order an investigation and report concerning custodial arrangements for the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential custody arrangements, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ~~ten~~ thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the

investigator and any person whom ~~he~~ the investigator has consulted for cross-examination at the hearing. A party may not waive ~~his~~ the party's right of cross-examination before the hearing.

4. The court ~~may~~ shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses shall be borne by the county.

SECTION 2. A new subsection to section 50-01-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

To charge and collect fees and expenses for services provided by its staff in accordance with policies and fee schedules adopted by the department of human services.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 183

HOUSE BILL NO. 1903
(Select Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)
(Approved by the Committee on Delayed Bills)

CHILD SUPPORT WITHHOLDING

AN ACT to create and enact fourteen new sections to chapter 14-09 of the North Dakota Century Code, relating to income withholding for the enforcement of child support obligations; to amend and reenact section 14-09-09.3 of the North Dakota Century Code, relating to income payor's obligations in child support enforcement; to repeal sections 14-09-09.1, 14-09-09.2, 14-09-09.4, 14-09-09.8, and 14-09-09.9 of the North Dakota Century Code, relating to wage assignments for the enforcement of child support and enforcement of out-of-state orders for wage withholding; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. For the purposes of this Act, unless the context or subject matter otherwise requires:

1. "Delinquent" means not paid in full within fifteen days of the date the child support was ordered to be paid.
2. "Disposable income" means gross income less deductions required by law for taxes and social security.
3. "Income" means any form of payment, regardless of source, owed to an obligor, including, but not limited to, an earned, unearned, taxable or nontaxable income, workman's compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
4. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government

owing income to an obligor and includes an obligor if the obligor is self-employed.

5. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
6. "Obligor" means any person owing a duty of support.
7. "Public authority" means the department of human services in execution of its duties pursuant to subsection 12 of section 50-09-02.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Income withholding order. When a judgment or order requires the payment of child support, or the payment of alimony and child support, it may be enforced by an income withholding order, as provided in this Act, in addition to any other remedies provided by law.

SECTION 3. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Provision of notice of impact of Act to obligors. Each decree or judgment issued by a court in this state which includes an order for support of minor children must include a statement that a delinquency in payment of the support due will result in an income withholding order being issued in accordance with this Act.

SECTION 4. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Procedure - Notice to obligor. If an obligor is delinquent, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must state:

1. That the obligor is delinquent in the payment of child support and therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage.
3. The total amount of money that will be withheld by the income payor from the obligor's income and that the amount is the sum of both of the following:
 - a. The obligor's current monthly support obligation.
 - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order exists, then an amount equal to twenty percent of the obligor's

current support obligation for application towards any arrearage subject to the limitations of section 7 of this Act.

4. That the income payor may withhold an additional sum of one dollar to cover the income payor's expenses.
5. That if not contested pursuant to section 5 of this Act, the income withholding order will be issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.

SECTION 5. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Hearing upon obligor's request. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 4 of this Act, the court shall hold a hearing within ten working days after the date of the request. If at the hearing the obligor establishes that there has been a mistake in the identity of the obligor, or excusable neglect beyond the control of the obligor, the court may order that no income withholding order issue. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld. In the absence of a finding of a mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 4 of this Act may not be the basis for an order that no income withholding order issue.

SECTION 6. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota, be attested in the name of the judge, sealed with the seal of the court, subscribed by the clerk, and directed to all current and subsequent income payors of the obligor. The income withholding order is binding on the income payor until further notice by the clerk and applies to all current and subsequent periods in which income is owed the obligor by the income payor. The income withholding order has priority over any other legal process against the same income.

SECTION 7. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Service of income withholding order on income payor. The clerk of court shall serve the income withholding order and a copy of this chapter on the income payor in the manner provided for

service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 4 or 11 of this Act. If a hearing was held under section 5 or 12 of this Act, the income withholding order and the copy of this chapter must be served within fifteen days of the date of the court's determination. The income withholding order must be sent no later than forty-five days following the notice given pursuant to section 4 or 11 of this Act. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is delinquent in the payment of support and that the income payor is therefore required to withhold a stated sum from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten days of the date the obligor is paid.
2. That the income payor may also withhold and retain an additional sum of one dollar from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld may not exceed fifty percent of the obligor's disposable income from this income payor.
4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14 of this Act.

SECTION 8. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Amendment - Termination of income withholding order. Upon amendment, termination, or stay of an income withholding order, the clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. An income withholding order may be stayed by the clerk of court when the location of the obligee is unknown to the clerk, preventing transmittal of the support.

SECTION 9. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Initiation by this state to other state. On application of a resident of this state, an obligee or an obligor of a support order issued by this state, or an agency to which an obligee has assigned support rights, the public authority shall promptly request the child support enforcement agency of another state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The public authority shall compile and transmit to the child support agency of the other state all documentation required to enter an order for this purpose. The public authority shall also transmit to the child support agency certified copies of any subsequent modifications of the support order. If the public authority receives notice that the obligor is contesting the income withholding in another state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

SECTION 10. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Duties of the agency upon receipt of request from other state.

1. Upon receipt of a support order of another state with the documentation specified in subsection 2 of this section from a child support agency of another state, the public authority shall file the order and documentation with a clerk of district court of any county in which the obligor resides or derives income.
2. All of the following documentation is required for the filing of a support order of another state for issuance of an income withholding order:

- a. A certified copy of the support order with all modifications.
- b. A certified copy of an income withholding order, if any, in effect.
- c. A copy of the portion of the income withholding statute of the state which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction.
- d. A sworn statement of the obligee or assignee of the obligee or a certified statement of the clerk of court of the arrearages and any assignment of support rights.
- e. The name, address, and social security number of the obligor, if known.
- f. The name and address of the employer or other income payor of the obligor upon whom the income withholding order is to be served.
- g. The name and address of the agency or person to whom the payments collected by income withholding are to be transmitted.

SECTION 11. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Notice to obligor. Upon filing of the documentation required by section 10 of this Act, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must state that an income withholding order has been requested by another state. The notice must further include the information, if available, required under subsections 2 through 6 of section 4 of this Act.

SECTION 12. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Hearing upon request of obligor. If the obligor files a request for hearing within ten days of the date of the notice made pursuant to section 11 of this Act, the court shall hold a hearing within ten working days of the date of the request. At the hearing contesting the proposed income withholding order, the documentation filed with the court, pursuant to section 10 of this Act, shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current payments and arrearages is as stated, and that the obligee would be entitled to income withholding

under the law of the state which issued the support order. If, at the hearing, the obligor establishes that there has been a mistake in the identity of the obligor or an overstatement of the amount of support stated to be owed by the obligor, the court may order that no income withholding order issue. In the absence of a finding of mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 11 of this Act may not be the basis for an order that no income withholding order issue. Issuance of an income withholding order does not confer jurisdiction on the courts of this state for any purpose other than issuance and enforcement of income withholding orders.

SECTION 13. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interstate income withholding - Form - Service on income payor - Termination of order. The provisions of sections 6 through 8 and section 14 of this Act are applicable to income withholding orders issued at the request of another state made pursuant to section 10 of this Act.

SECTION 14. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration of income withholding. The supreme court shall develop procedures for the accurate documentation and monitoring of support payments made through income withholding under this chapter. Procedures must be developed for the clerks of court to promptly distribute amounts withheld pursuant to an income withholding order and to promptly refund erroneously withheld amounts.

SECTION 15. AMENDMENT. Section 14-09-09.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.3. Child support - Duties and liabilities of employer income payor under wage assignment order or order to withhold and transmit earnings income withholding order.

1. Any employer income payor failing to comply with any requirements in sections 14-09-09-1 and 14-09-09-2 section 7 of this Act may be punished by the court for civil contempt. The court shall first afford such employer income payor a reasonable opportunity to purge itself of such contempt.
2. Any employer income payor who shall fail or refuse to deliver earnings income pursuant to an order under section 14-09-09-1 or section 14-09-09-2 income withholding order, when such employer income payor has had in its possession such earnings income, shall be personally liable for the

amount of such earnings income which the employer income payor failed or refused to deliver, together with costs, interest, and reasonable attorney's fees.

3. Any employer who dismisses, demotes, disciplines, or in any way penalizes an obligor-employee on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, ~~or~~ on account of the employer's compliance with such order or orders, or on account of an income withholding order, shall be liable to the obligor-employee for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor-employee, including reinstatements and backpay.
4. An employer income payor may be enjoined by a court of competent jurisdiction from continuing any action in violation of sections 14-09-09.1 and 14-09-09.2 section 7 of this Act.
5. Any proceeding against an employer income payor under this section must be commenced within ninety days after the employer's income payor's act or failure to act upon which such proceeding is based.
6. Compliance by an employer income payor with an order issued under sections 14-09-09.1 and 14-09-09.2 income withholding order operates as a discharge of the employer's income payor's liability to the obligor-employee obligor as to that portion of the obligor-employee's wage obligor's income so affected.

* SECTION 16. REPEAL. Sections 14-09-09.2 and 14-09-09.4 of the North Dakota Century Code, and sections 14-09-09.1, 14-09-09.8, and 14-09-09.9 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 17. EFFECTIVE DATE. This Act becomes effective on March 1, 1987.

Approved December 5, 1986
Filed December 8, 1986

- * NOTE: Section 14-09-09.8 was also amended by section 1 of House Bill No. 1034, chapter 570.

CHAPTER 184

SENATE BILL NO. 2490
(Senators Stenehjem, Nalewaja)
(Representatives Cleveland, J. DeMers)

CHILD CUSTODY MEDIATION

AN ACT to authorize court ordered mediation in certain contested child custody, support, or visitation proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Purpose. The purpose of this Act is, through mediation, to enable the parties in contested child custody, support, or visitation proceedings to resolve the dispute voluntarily.

SECTION 2. Mediation authorized - Exception. In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve physical or sexual abuse of any party or the child of any party to the proceeding.

SECTION 3. Appointment of mediator. For any mediation ordered under this Act, the court shall appoint a mediator from a list of qualified mediators approved by the court.

SECTION 4. Qualifications of mediators. The supreme court shall adopt rules establishing the minimum qualifications of a mediator. To be included on a list of qualified mediators approved by the court, a person must possess the minimum qualifications.

SECTION 5. Privacy. The mediator shall conduct the mediation proceedings in private. The mediator may not exclude counsel from participation in the mediation proceedings.

SECTION 6. Confidentiality. Any communication, verbal or written, in a mediation proceeding under this Act is confidential and inadmissible as evidence in any proceeding. A mediator appointed under this Act may not be a witness and the notes and work product of the mediator are not subject to discovery or subpoena in

the proceeding in which the contested child custody, support, or visitation is at issue.

SECTION 7. Mediation agreement. The mediator shall reduce to writing any agreement of the parties. The mediator shall inform the parties of their right to review the agreement with counsel before they sign the agreement. After the agreement is signed by the parties, the mediator shall present the agreement to the court. The agreement is not binding upon the parties until approved by order of the court.

SECTION 8. Failure to agree. The mediator may report to the court at any time that the parties are unable to reach an agreement. The mediator may recommend to the court that a full hearing on the custody, support, or visitation issue be held within thirty days. The mediator may not make a substantive recommendation to the court concerning the contested issue of custody, support, or visitation.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 185

SENATE BILL NO. 2039
(Legislative Council)
(Interim Budget Committee on Human Services)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to establish a children's services coordinating committee to develop a plan for a coordinated delivery of services to children and adolescents; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Children's services coordinating committee - Membership - Meetings. The children's services coordinating committee consists of the governor or a designee of the governor; the attorney general or a designee of the attorney general; the superintendent of public instruction; the executive director of the department of human services; the state health officer; the director of job service North Dakota; the director of institutions; the director of vocational education; the chairman of the governor's committee on children and youth; the executive director of the Indian affairs commission; and a designee of the chief justice. The governor or the governor's designee shall act as chairman of the children's services coordinating committee. The children's services coordinating committee shall meet at least once each month and may establish subcommittees as it deems necessary to carry out its purposes.

SECTION 2. Support services. Each executive branch agency, department, and office shall provide at the request of the governor any support services required for the children's services coordinating committee. The governor may appoint one person who is employed by an executive branch agency, department, or office represented on the children's services coordinating committee as secretary and reporter of the children's services coordinating committee.

SECTION 3. Plan for coordinated delivery of services to children and adolescents. The children's services coordinating committee shall develop a plan for a coordinated delivery of services to children and adolescents, including children and adolescents who are abused, neglected, emotionally disturbed, mentally ill, runaways, homeless,

dependent upon alcohol or drugs, delinquent, deprived, or unruly. The children's services coordinating committee shall submit the plan to the legislative council at the first meeting of the legislative council occurring after November 10, 1988. The plan shall include:

1. A clarification of the policies and procedures which address the appropriate role and responsibilities of each state, regional, and local agency, department, institution, and office in the delivery of educational, mental health, protective, rehabilitative, and related social services to children and adolescents;
2. Definitions and definitive criteria for identification of children and adolescents who are at risk and in need of educational, mental health, protective, rehabilitative, and related social services;
3. A description of governmental services authorized for children and adolescents, a description of additional services specifically recommended for authorization, and an inventory of available nongovernmental resources;
4. Recommendations for specific new mechanisms to improve coordination of public and private services for children and adolescents and their families, including the development of regional children's services coordinating committees;
5. Training methods and standards for the training of personnel serving children and adolescents, including identification of existing training resources and cross-training in matters of sexual abuse, substance abuse, child and family treatment, and prevention;
6. Data collection systems for the effective evaluation and oversight of services to children and adolescents;
7. Mechanisms to facilitate coordination with the state board of higher education to address the need for training of professionals in the various disciplines which evaluate and treat children and adolescents at risk;
8. Policies and procedures developed in cooperation with and with input from parent groups of local school districts for the coordination of state activities with public school programs directed toward children and adolescents at risk and their families;
9. Policies and procedures for the coordination of other state activities with public school programs directed toward the prevention of child abuse and neglect, drug and alcohol abuse, adolescent pregnancy, and suicide prevention; and

10. Any additional matters that may be necessary or appropriate, including recommendations to the legislative assembly for changes in law.

SECTION 4. Duty to review alternatives. The children's services coordinating committee shall review and consider the recommendations contained in the final report of the governor's commission on children and adolescents at risk and such other sources and model programs as the committee may find to be useful.

SECTION 5. Authority to accept and expend grants, gifts, and services - Continuing appropriation. The children's services coordinating committee may apply for and accept any funds, grants, gifts, or services made available for the purpose of planning programs for services for children and adolescents by any federal agency or department or any private agency or individual. Funds received by the children's services coordinating committee pursuant to this section must be deposited in the state treasury in a special fund designated as the children's services coordinating committee fund. There is hereby appropriated out of the children's services coordinating committee fund any moneys that may become available through grants or gifts to the children's services coordinating committee for the purpose of carrying out the provisions of this Act. No expenditure of such moneys may be undertaken without prior approval of the budget section of the legislative council.

SECTION 6. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 186

SENATE BILL NO. 2048
(Legislative Council)
(Interim Indian Jurisdiction Committee)

RECIPROCAL RECOGNITION OF JUDGMENTS

AN ACT to provide for the reciprocal recognition of certain state and tribal court judgments, decrees, and orders; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Reciprocal recognition of certain state and tribal court judgments, decrees, and orders - Conditions. The district courts and county courts shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. The tribal court judgment, decree, or order must be rendered by a judge who meets the qualifications for admission to practice law in this state. A state court may inquire as to the facts of the case or tribal law only to the extent necessary to determine whether the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. Recognition and enforcement of tribal court judgments, decrees, and orders under this section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies under the same limitations provided by this section for recognition and enforcement of tribal court judgments, decrees, and orders by state courts.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved March 12, 1987
Filed March 16, 1987

EDUCATION

CHAPTER 187

HOUSE BILL NO. 1248
(Committee on State and Federal Government)
(At the request of the Board of University and School Lands)

STATE LANDS INCOME

AN ACT to amend and reenact sections 15-01-01, 15-01-02.1, 15-01-03, 15-01-04, 15-08.1-04, 15-08.1-06, 15-08.1-08, 15-08.2-09, and 47-06-08 of the North Dakota Century Code, relating to the composition of the board of university and school lands, fees charged by the board of university and school lands for managing certain property, composition and meetings of the board, depositing of income from certain lands in the lands and minerals trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-01. Board - Membership - Officers. The governor, secretary of state, state ~~auditor~~ treasurer, attorney general, and superintendent of public instruction shall constitute the "board of university and school lands". The governor shall be the ~~president chairman~~, the secretary of state shall be the vice ~~president chairman~~, and the commissioner of university and school lands shall be the secretary of the board. In the absence of the commissioner at any meeting of the board, the deputy commissioner of university and school lands shall act as secretary. When acting as the board of university and school lands, the members of the board shall act in person and shall not be represented by any assistant, clerk, or deputy.

SECTION 2. AMENDMENT. Section 15-01-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-02.1. Board of university and school lands to set and establish fees - Collections. The board of university and school lands shall have authority to set and establish fees in amounts equal to the cost of the issuance of patents, deeds, leases, assignments, land contracts, holding land sales, furnishing documents, ~~and~~ receiving and processing all loans made by the board, managing property acquired

under chapter 15-08.1, and managing property for other state entities. All leasing fees for agricultural purposes shall be collected by the county treasurer of the county wherein such land is leased at the time the first payment is made for leases, and such funds shall be deposited in the general fund of the county. All other fees provided for in this section shall be deposited in the state lands maintenance fund.

SECTION 3. AMENDMENT. Section 15-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-03. Meetings of board - Quorum. The board shall meet at the office of the commissioner on the last Thursday of each month ~~at ten o'clock in the forenoon.~~ Special meetings of the board may be held at any time at the written call of the ~~president~~ chairman or of any two members of the board. Three members of the board shall constitute a quorum.

SECTION 4. AMENDMENT. Section 15-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-04. Record of meeting. The secretary of the board shall enter in a suitable book kept for that purpose a full and correct record of all the proceedings of the board at each session thereof. The record, when approved by the board, shall be signed by the ~~president~~ chairman or presiding officer of the meeting and by the secretary.

SECTION 5. AMENDMENT. Section 15-08.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-04. Exceptions to transfers. The transfers of property set forth in sections 15-08.1-02 and 15-08.1-03 shall not include interests in real property that lie within the corporate limits of cities ~~and shall not include interests in real property that the board of university and school lands feels can best be managed by the Bank of North Dakota.~~

SECTION 6. AMENDMENT. Section 15-08.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-06. Duties and powers of the board. The board of university and school lands shall manage, operate, and supervise all properties transferred to it by this chapter; shall have full power of sale with respect to any and all such property; may enter into surface or mineral leases; may enforce all rights of the owner by all lawful means in its own name; ~~and~~ may make and execute all instruments of release or conveyance as agreements were made heretofore, or are made hereafter; ~~and may establish, charge, and collect fees for the management of property acquired under this chapter.~~ The board shall pay the costs incurred in carrying out its

duties under this chapter from the fees and income derived under this chapter.

SECTION 7. AMENDMENT. Section 15-08.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-08. Income - Expenses - Reimbursement - Creation of lands and minerals trust. All The income derived from the sale, lease, and management of the lands acquired by the board of university and school lands pursuant to this chapter and not belonging to other trust funds must be apportioned to the entity from which the property was acquired. The expenses of sale, lease, and management of the property acquired from each entity must first be deducted from the income apportioned to the respective entity. If the property was acquired from a trust, the remainder after expenses must be credited to that trust. If the property was acquired from the Bank of North Dakota, the remainder after expenses must be credited to the Bank of North Dakota until the Bank has been reimbursed for the total principal, interest, and costs due the Bank at the time of transfer. The balance shall be deposited in a fund to be known as the lands and minerals trust. The corpus and interest of such trust may be expended as the legislative assembly may provide.

SECTION 8. AMENDMENT. Section 15-08.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.2-09. Income to ~~general~~ lands and minerals trust fund. All income derived from the sale, lease, and management of the lands acquired by the board of university and school lands pursuant to this chapter and not belonging to other trust funds shall be deposited in the ~~general~~ lands and minerals trust fund.

SECTION 9. AMENDMENT. Section 47-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-06-08. Islands and relicted lands in navigable streams belong to state. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary. The control and management, including the power to execute mineral leases, of islands, relictions, and accumulations of land owned by the state of North Dakota in navigable streams and waters and the beds thereof, shall be in the board of university and school lands. All income and proceeds derived from such lands shall be deposited in the ~~general fund for the purpose of defraying the general expenses of the state government lands and minerals trust fund.~~ This section shall not be construed as affecting or changing the provisions of any contract already executed by or on behalf of the state of North Dakota or any department or agency thereof concerning such lands and shall not apply to lands within the Garrison diversion conservancy district.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 188

HOUSE BILL NO. 1078
(Wald)

STARK COUNTY FAIR LANDS

AN ACT to authorize the board of university and school lands to sell and convey certain land owned by the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. The board of university and school lands is authorized to sell and convey the following property to Stark County, North Dakota:

A tract of land comprising approximately one hundred seventy acres, known as the "State Second Addition", and lying in the southwest and northwest quarters of section five, township one hundred thirty-nine, range ninety-six, Stark County, North Dakota.

The property must be sold at a price agreeable to both parties but not less than the fair market value thereof, based upon two independent appraisals. The state shall reserve all mineral rights in and under the premises conveyed as are now held by the state. The sale of the property to Stark County by the board of university and school lands is deemed to be the best possible return to the state of North Dakota as provided in section 2 of chapter 203 of the 1985 Session Laws of North Dakota.

SECTION 2. The property being sold must be used by Stark County for the development of a county fairgrounds. If the property ceases to be used for that purpose, ownership of the property reverts to the state of North Dakota.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 189

HOUSE BILL NO. 1180
(Committee on State and Federal Government)
(At the request of the Board of University and School Lands)

PERMANENT FUNDS AND INVESTMENTS

AN ACT to amend and reenact sections 15-03-01, 15-03-04.1, 15-03-04.3, 15-03-16, 15-03-17, and 15-03-18 of the North Dakota Century Code, relating to custody of permanent funds, management of the loan pool account, continuing appropriation for certain investments and related fees, redemption of bonds, and records of investments; to repeal sections 15-03-03, 15-03-19, and 15-03-21 of the North Dakota Century Code, relating to custody of funds, warrants, and the collection of money due on securities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-01. Permanent funds - State treasurer ~~is eustodian~~. All moneys belonging to the permanent funds of the common schools and other public institutions derived from the sale of any of the lands described in section 15-01-02 or from any other source shall be paid over to ~~and held by~~ the state treasurer and shall be subject to the order of the board of university and school lands. Such moneys shall be paid over on the order of the board for investment as provided in this chapter whenever the board requires the same.

SECTION 2. AMENDMENT. Section 15-03-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-04.1. Loan pool account. There is hereby created in the Bank of North Dakota a loan pool account. The board of university and school lands may purchase first mortgage farm loans made in accordance with this chapter from the Bank of North Dakota. All purchased farm loans must be managed and serviced by the Bank of North Dakota. The loans shall be credited to the loan pool account and the investments, repayments, interest, and income shall be credited to the various land department trust funds in the proportion that each participates therein. The loan pool account

shall consist of current loans whenever possible. The board may authorize the Bank of North Dakota to renegotiate the mortgages in the loan pool account, including debt restructuring and reamortization, so long as the renegotiation is consistent with sound banking practices and the rules, regulations, and guidelines of the board. In the event ~~delinquent loans are kept in the loan pool account~~ foreclosures are necessary, the Bank of North Dakota shall handle foreclosures in accordance with standard banking practices and proceeds shall be properly credited to the loan pool account and income accounts. The Bank of North Dakota shall charge such fee for the management of each loan as the Bank of North Dakota and the board of university and school lands shall agree. Such fee may only be deducted from interest payments received on loans. Loans purchased by the board of university and school lands may have originated in the Bank of North Dakota or other financial institutions. The Bank of North Dakota shall certify that all loans purchased by the board of university and school lands are first mortgages and that there are no prior judgments, mortgages, liens, or other encumbrances against the security for such first mortgages.

SECTION 3. AMENDMENT. Section 15-03-04.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-04.3. Loan pool account - Execution of instruments Management by Bank of North Dakota. The Subject to the provisions of this chapter the Bank of North Dakota shall, in accordance with standard banking practices, manage all loans in the loan pool account and execute all instruments on behalf of the board of university and school lands that pertain to real estate mortgages in the loan pool account, including reamortization agreements, satisfactions and partial releases. The Bank of North Dakota shall also act as agent for the board and shall execute all instruments, including reamortization agreements, satisfactions and partial releases, that pertain to mortgages previously issued by the board. All instruments shall be executed in the same manner as specified in section 6-09-26.1. This section is self-executing and no assignment, power of attorney, or other instrument of transfer is necessary to establish the authority of the Bank of North Dakota to act on behalf of the board of university and school lands under this section.

SECTION 4. AMENDMENT. Section 15-03-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-16. Appropriation for purchase of investment bonds and mortgages investments. There is hereby appropriated annually the sum necessary for the payment severally of the purchase prices, investments of the board of university and school lands including interest accrued to the date of purchase, of investment bonds or mortgages interest, and related investment management fees, trustee fees, and custodial fees for the permanent funds under the control of the board. Each payment shall be made from the fund for which the purchase investment is made.

SECTION 5. AMENDMENT. Section 15-03-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-17. Redemption of bonds by political subdivisions. The board of university and school lands ~~and the state treasurer~~ shall allow any county, city, park district, township, or school district to redeem, at any time after two years from the date of issue, at par with accrued interest, any bonds issued by it which the state has purchased and holds as an investment of any of the permanent school funds of the state.

SECTION 6. AMENDMENT. Section 15-03-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-18. Commissioner to receive and present offers for sales of securities --Maintain maintain records of mortgages and securities investments. The commissioner of university and school lands shall receive and present to the board all offers for the sale of securities. He shall keep such books as may be necessary to register and describe all securities and mortgages purchased or taken by keep a complete record of all investments of the board for the benefit of any of the permanent funds under its control. The books kept by the commissioner shall be ruled to permit:

- 1- The registry of the name and residence of the person offering to sell any bonds, securities, or mortgages.
- 2- If bonds, the designation of the municipality, corporation, or sovereignty for which the offer is made.
- 3- A full and detailed description of every governmental bond, whether of the United States, this or any other state, or a municipality, and the date, number, series, amount, and rate of interest of each bond, and when the interest and principal, respectively, are payable.
- 4- If any other security, a full and detailed description of the security according to sound accounting principles.

The foregoing record shall be made before the completion of the purchase of any bond, security, or mortgage.

SECTION 7. REPEAL. Sections 15-03-03, 15-03-19, and 15-03-21 of the North Dakota Century Code are hereby repealed.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 1987
 Filed March 23, 1987

CHAPTER 190

HOUSE BILL NO. 1031
(Legislative Council)
(Interim Budget Committee on Government Finance)

STATE INVESTMENT BOARD

AN ACT to amend and reenact sections 15-03-04, 15-03-15, 15-39.1-26, 21-10-01, 21-10-02, 21-10-04, 21-10-05, 21-10-06, 21-10-07, 21-10-08, 37-07.3-02, 37-14-14, and 54-30-15 of the North Dakota Century Code, relating to powers and duties of the state investment board, meetings of the state investment board, powers and duties of the state investment board director, and legal investments for the state investment board; and to repeal section 21-10-03 of the North Dakota Century Code, relating to activities of the state investment board in cooperation with the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-04. Investment of funds - Purchase of bonds and mortgages - Appraisal Legal investments. Subject to the provisions of section 15-03-05, the board of university and school lands shall invest the money belonging to the permanent funds under its control in the following securities and investments:

1. First mortgages on farmlands and improvements thereon in this state to the extent such mortgages are guaranteed or insured by the United States or any instrumentality thereof, or if not so guaranteed or insured, not exceeding in amount eighty percent of the actual value of the property on which the same may be loaned, such value to be determined by competent appraisal.
2. All investments that are enumerated under section 21-10-07 as legal investments for the state investment board. Securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof.
3. Bonds or certificates of indebtedness of this state.

4. General obligation bonds of any other state.
5. Bonds, certificates of indebtedness, or warrants of any political subdivision of this state which constitute the general or contingent general obligations of the issuing tax authority, or revenue bonds of a political subdivision issued for public utility purposes or under the authority of chapter 40-57.
6. Loans and mortgage investments, insured or guaranteed in any manner, wholly or in part, or for which a commitment to so insure or guarantee has been issued by the United States or any instrumentality or agency thereof; or other investments that are issued by or fully insured or guaranteed by the United States or any instrumentality or agency thereof or this state or any instrumentality or agency thereof.
7. Bank of North Dakota certificates of deposit.
8. North Dakota savings and loan association and commercial bank certificates of deposit to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof.
9. Short-term commercial and finance company paper traded on a national basis and issued by a corporation having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.
10. Bonds, notes, or debentures of any corporation duly incorporated under the laws of any state of the United States rated as "A" or higher by a nationally recognized rating service approved by the board.
11. Nonrated bonds, notes, or debentures of any corporation duly incorporated under the laws of any state and whose principal business operations are carried on within this state, having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.
12. Evidence of indebtedness issued by instrumentalities of this state, including evidence of indebtedness issued by the North Dakota housing finance agency.

13. Mortgage loans purchased from lenders or certificates of indebtedness representing pools of mortgage loans purchased from lenders if the mortgages are made to persons to finance the purchase or substantial rehabilitation of owner-occupied, single family residential dwellings, including mobile homes and manufactured housing. The loans purchased must be secured by mortgages on real property located in this state. "Lender" means any bank or trust company chartered in this state, any national banking association located in this state, any state or federal savings and loan association located in this state, and any federal housing administration approved mortgagee or other mortgage lending institution engaged in home mortgage lending in this state.
14. Common or preferred stocks of any corporation organized under the laws of any state, but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks.

As used in this section, the term "net income" means income after deducting operating and maintenance expenses, all taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income and expense.

The term "fixed charges" includes interest on funded and unfunded debt, amortization of debt discount and expense, and rentals for leased property.

SECTION 2. AMENDMENT. Section 15-03-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-15. Meeting to consider investments and approval of farm loans - Notice - Vote required. The board of university and school lands shall not authorize nor approve the purchase of securities or farm loans except at a meeting of the board held pursuant to a notice given by the secretary of the board to every member in time to afford each member an opportunity to be present at the meeting. The notice shall specify that the question of authorization of purchase or the action on the approval of purchase of certain securities or farm loans is to be considered at the meeting. A majority vote of all the members of the board shall be required to authorize or to approve the purchase of securities or farm loans, and such vote shall be taken by yeas and nays and shall be duly recorded in the books of the board. The board is authorized to employ such personnel as it deems necessary to serve as counsel and adviser to the board and assist it on the investment of funds in securities and investments enumerated in section ~~21-10-07~~ 15-03-04.

SECTION 3. AMENDMENT. Section 15-39.1-26 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-26. Investment of moneys in fund. Investment of the fund shall be under the supervision of the state investment board in accordance with chapter 21-10, ~~except that the investments shall not be limited to those specified in section 21-10-07 and except that the state investment board shall have the authority to contract with insurance companies, trust banks, or other financial institutions to hold and invest fund moneys;~~ provided, that the total amount of all moneys so placed shall not exceed an amount equal to twenty percent of the total moneys of the fund. Such moneys shall be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. Such moneys may be expended by the state investment board by the preparation of an appropriate voucher and submitting such voucher to the office of management and budget, except that any related investment counseling fees, trustee fees, or custodial fees charged by money management firms shall be paid out of moneys in the fund without the need for a prior appropriation or the submission of a voucher.

SECTION 4. AMENDMENT. Section 21-10-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-01. State investment board - Membership - Term - Compensation. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the ~~chairman~~ chairperson of the workmen's compensation bureau, the commissioner of insurance, the executive secretary of the teachers' fund for retirement, and ~~two~~ three members who are experienced in, and have considerable knowledge of the field of investments, who have considerable knowledge of the investments enumerated in section 21-10-07, and who are not otherwise employed by the state of North Dakota. ~~The ex officio members of the board~~ governor shall appoint the members with investment experience to four-year terms concurrent with the four-year terms of the elected officials on the board three-year, two-year, and one-year terms respectively on January 31, 1989. Thereafter, the appointed members shall serve four-year terms. The appointed members are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04.

SECTION 5. AMENDMENT. Section 21-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-02. Board - Powers and duties. The board shall be charged with the investment of the funds enumerated in section 21-10-06. It shall approve general types of securities for investment by these funds and set policies and procedures regulating securities transactions on behalf of the various funds. Representatives of the funds enumerated in section 21-10-06 may make recommendations to the board in regard to investments. The board or its designated agents shall be custodian of securities purchased on behalf of funds under

the management of the board. The board may appoint an investment director or advisory service who shall be experienced in, and hold considerable knowledge of the field of investments and shall hold considerable knowledge of the investment of securities enumerated in section 21-10-07. The investment director or advisory service shall serve at the pleasure of the board. The investment director or advisory service may be an individual, corporation, partnership, or any legal entity which meets the qualifications established herein. The board may appoint, in addition to an investment director or advisory service, such personnel as it deems necessary to properly fulfill their responsibility. Existing department facilities for making traditional investments within the state shall continue to function subject however to supervision and management of the board. The board may authorize the investment director to lend securities held by the funds. These securities must be collateralized by direct or guaranteed obligations of the United States government as directed by the board.

SECTION 6. AMENDMENT. Section 21-10-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-04. Board - Meetings. The state investment board shall select one of its members to serve as chairman, and shall meet at the call of the chairman, director, or upon written notice signed by two members of the board. Such meetings shall be held not less than four eight times per year.

SECTION 7. AMENDMENT. Section 21-10-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-05. Director - Powers and duties. Subject to the limitations contained in the law or the policymaking regulations or resolutions promulgated by the board, the investment director shall have the power to make purchases, sales, exchanges, investments, and reinvestments of the funds under the management of the board. This section shall constitute a continuing appropriation of all moneys required for the making of investments of funds under the management of the board. The director shall see that moneys invested are at all times handled in the best interests of the state funds. Securities or investments may be sold or exchanged for other securities or investments. No sale or exchange shall be at a price less than the going market price at the time the securities or investments are sold or exchanged-

The investment director shall formulate and recommend to the investment board for approval, investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions, and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale, or exchange transactions which should govern the investment of funds under this chapter.

*** SECTION 8. AMENDMENT.** Section 21-10-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement, ~~in accordance with section 15-39-1-26.~~
3. State fire and tornado fund.
4. Workmen's compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.
6. National guard training area and facility development trust fund.
7. National guard tuition trust fund.

Separate accounts shall be maintained for each of the above funds and the moneys or securities of the individual funds shall not be commingled. However, when it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds shall immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to the securities shall be taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies, and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf.

SECTION 9. AMENDMENT. Section 21-10-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-07. Legal investments. ~~The following types of securities and investments are legal investments for funds, the investment of which is under the supervision of the board-~~

- 1- ~~Securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof-~~
- 2- ~~Bonds or certificates of indebtedness of this state-~~

* NOTE: Section 21-10-06 was also amended by section 2 of House Bill No. 1236, chapter 288.

- 3- General obligation bonds of any other state-
- 4- Bonds, certificates of indebtedness, or warrants of any political subdivision of this state which constitute the general or contingent general obligations of the issuing tax authority, or revenue bonds of a political subdivision issued for public utility purposes or under the authority of chapter 40-57-
- 5- Loans and mortgage investments, insured or guaranteed in any manner, wholly or in part, or for which a commitment to so insure or guarantee has been issued by the United States or any instrumentality or agency thereof, or other investments that are issued by or fully insured or guaranteed by the United States or any instrumentality or agency thereof or this state or any instrumentality or agency thereof-
- 6- Bank of North Dakota certificates of deposit-
- 7- North Dakota savings and loan association and commercial bank certificates of deposit to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof-
- 8- Short-term commercial and finance company paper traded on a national basis and issued by a corporation having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period-
- 9- Bonds, notes, or debentures of any corporation duly incorporated under the laws of any state of the United States rated as "A" or higher by a nationally recognized rating service approved by the board-
- 10- Nonrated bonds, notes, or debentures of any corporation duly incorporated under the laws of any state and whose principal business operations are carried on within this state, having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period-
- 11- Evidence of indebtedness issued by instrumentalities of this state, including evidence of indebtedness issued by the North Dakota housing finance agency-

12. Mortgage loans purchased from lenders or certificates of indebtedness representing pools of mortgage loans purchased from lenders if the mortgages are made to persons to finance the purchase or substantial rehabilitation of owner-occupied, single family residential dwellings, including mobile homes and manufactured housing. The loans purchased must be secured by mortgages on real property located in this state. "Lender" means any bank or trust company chartered in this state, any national banking association located in this state, any state or federal savings and loan association located in this state, and any federal housing administration approved mortgagee or other mortgage lending institution engaged in home mortgage lending in this state.
13. Investments enumerated under chapter 15-03 as legal investments for the board of university and school lands.
14. Common or preferred stocks of any corporation organized under the laws of any state, but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks.

As used in this section the term "net income" means income after deducting operating and maintenance expenses, all taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income and expense.

The term "fixed charges" includes interest on funded and unfunded debt, amortization of debt discount and expense, and rentals for leased property. The state investment board shall apply the prudent investor rule in investing for funds under its supervision. The "prudent investor rule" means that in making investments the fiduciaries shall exercise the judgment and care, under the circumstances then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income.

SECTION 10. AMENDMENT. Section 21-10-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-08. Reserves - Percentage limitations. In order to meet claims and liabilities, reserves shall be established and maintained in each of the funds in accordance with recommendations of the authorized fiduciaries thereof consisting of cash, Bank of North Dakota certificates of deposit or short term United States Government securities in amounts between one percent and ten percent of the assets of each fund.

The board may authorize temporary deviations from the amounts of such reserves in its sound discretion.

~~Not more than fifty percent of the assets of any fund shall be invested in securities authorized by subsections 8, 9, and 10 of section 21-10-07.~~

SECTION 11. AMENDMENT. Section 37-07.3-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07.3-02. National guard training area and facility development trust fund - Investment and income. The national guard training area and facility development trust fund consists of moneys transferred or credited to the fund, pursuant to this chapter and provisions of other laws. The state investment board shall invest the fund ~~in the legal investments~~ as authorized by section 21-10-07. All interest earned and income received on the investments accrue to the fund.

* **SECTION 12. AMENDMENT.** Section 37-14-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund shall consist of moneys transferred or credited to the fund, pursuant to the provisions of this chapter and of other laws. The fund shall be invested by the state treasurer in legal investments authorized by section ~~21-10-07~~ 15-03-04. All income received on the investments is to be utilized in benefit and service to veterans as defined in section 37-01-40, or their dependents, as determined and appropriated by the legislative assembly.

SECTION 13. AMENDMENT. Section 54-30-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-30-15. Investment of bond sinking fund. The state treasurer, with the approval of the industrial commission, shall invest the fund designated as the real estate bond sinking fund in any securities designated as legal investments by section ~~21-10-07~~ 15-03-04. At the request of the commission, the state treasurer shall redeem and take up out of the real estate bond sinking fund any series of real estate bonds outstanding which may be called by the commission. Upon notification of the call the state treasurer shall cause to be published a notice of call as directed by the commission but not less than forty-five days prior to the date of call. No other disposition by appropriation, or otherwise, ever shall be made of the money in the fund until the bonds are paid fully or until the time limit provided by law for the payment thereof has expired, but if any of the bonds issued and delivered to the commission, as hereinbefore provided, are returned to the state treasurer not sold, then the returned bonds shall not be deemed a part of the bond issue secured by the fund.

* NOTE: Section 37-14-14 was also amended by section 4 of House Bill No. 1009, chapter 9.

* **SECTION 14. REPEAL.** Section 21-10-03 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 21-10-03 was also amended by section 1 of House Bill No. 1236, chapter 288.

CHAPTER 191

HOUSE BILL NO. 1186
(Committee on State and Federal Government)
(At the request of the Board of University and School Lands)

STATE LAND LEASE TRACT SIZE

AN ACT to amend and reenact sections 15-04-10 and 15-08-25 of the North Dakota Century Code, relating to the size of state land lease tracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-04-10. Leasing to be by auction - Requirements governing. The commissioner of university and school lands, or such other person as may be appointed by the board of university and school lands, shall conduct the leasing of the lands. The leasing shall be at public auction, to the highest bidder, and shall be held at the courthouse or the place where terms of the district court are held. The auction shall commence on the day specified in the advertisement for the leasing and shall be held between the hours of ten a.m. and five p.m., and shall continue from day to day until all tracts or parcels of land advertised for lease have been leased or offered for lease. Auctions for leasing lands shall not exceed ten days in any county, except that an adjournment may be made over Sunday or any legal holiday. Notice shall be given when the land is offered for lease, that all bids are subject to approval by the board. In counties where a large number of tracts of land are to be leased, the land situated in certain townships may be designated in the advertisement to be leased on certain specified days, and in that case the lands shall be leased or offered for lease on the days specified. If all designated lands are not offered for lease because of lack of time, the leasing of the lands unoffered may be adjourned until the following day or days when they shall be the first lands offered for lease. Lands that have not been subdivided specially shall be offered for lease in tracts of one-quarter section each, and lands except as provided in section 15-08-25. Lands specially subdivided may be offered for lease in the smallest subdivision thereof. At the time of offering the lands for lease, the county auditor of the county shall act as clerk. Within five days after the completion of the auction the county auditor shall certify to the board of

university and school lands a list of the lands leased, the price for which each tract was leased, the name of each lessee, and the initial amount of money paid by each lessee for rent.

SECTION 2. AMENDMENT. Section 15-08-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-25. Lease or sale of public lands traversed or bisected by a railroad or highway, road, railroad, canal, river, or lake. All boards, departments, and officials of government shall be authorized and permitted to lease or sell such school and public lands in separate tracts where such tract of land is traversed or bisected by a highway, road, or railroad, canal, river, or lake as two or more separate parcels, each of which may be leased or sold separately or together with an adjoining tract. It is the intent of this section that such tract located on one side or the other of a highway or a railroad, which may be less than one hundred sixty acres (64.75 hectares), as the case may be, may be sold or leased to separate purchasers or tenants.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 192

SENATE BILL NO. 2152
(Committee on Natural Resources)
(At the request of the Board of University and School Lands)

UNIVERSITY AND SCHOOL LANDS MINERAL LEASES

AN ACT to create and enact a new section to chapter 15-05 of the North Dakota Century Code, relating to the authority of the board of university and school lands to lease gravel, scoria, sand, and construction aggregate; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Leases of gravel, scoria, sand, and construction aggregate. Notwithstanding the provisions of chapter 38-09, the board of university and school lands may enter into mineral leasing agreements for gravel, scoria, sand, and construction aggregate under rules adopted by the board. No lease under this section may be issued by the board for less than fair market value, nor may any lease under this section be issued for a period of more than five years.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 193

SENATE BILL NO. 2207 (Committee on Education)

(At the request of the Board of University and School Lands)

STATE NONGRANT LAND SALES

AN ACT to create and enact a new section to chapter 15-06 of the North Dakota Century Code, relating to renegotiation of land contracts; to amend and reenact sections 15-07-02, 15-07-04, and 15-07-10 of the North Dakota Century Code, relating to sale of nongrant lands, and the right of repurchase of a former mortgagor; to repeal sections 15-06-33, 15-06-34, 15-06-35, 15-06-36, 15-06-37, 15-07-05, 15-07-06, 15-07-08, 15-07-09, 15-07-11, 15-07-12, 15-07-13, 15-07-14, 15-07-15, 15-07-16, 15-07-17, and 15-07-18 of the North Dakota Century Code, relating to sale of stumpage near Garrison dam and to specific requirements for terms and conditions of sale of nongrant lands; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Contracts - Renegotiation. The board of university and school lands may renegotiate the terms of any contract made under this chapter when requested by a purchaser who has paid at least thirty percent of the purchase price and is unable to make the payments as required by the contract. The renegotiation may include restructuring and reamortization so long as the resulting contract is consistent with the fiduciary responsibilities of the board.

SECTION 2. AMENDMENT. Section 15-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-07-02. Rules and regulations for sale of nongrant lands - Powers of board. The board of university and school lands may make such rules and regulations not in conflict with the provisions of this title as it shall deem necessary as to the manner, place, and time of payment of principal and interest and, the conduct of the business of selling and disposing of lands other than original grant lands, and the terms and conditions of those sales. The board may sell nongrant lands on amortized payment contracts, and renegotiate the

terms of those contracts, so long as the purchaser, at the time renegotiation is requested, has paid at least thirty percent of the purchase price and the resulting contract is consistent with this chapter and with the board's fiduciary responsibilities.

SECTION 3. AMENDMENT. Section 15-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-07-04. Private sale - Terms and prices Sale requirements. Any land sold under the provisions of this chapter shall be by public sale auction or sealed bids, except purchases under the provisions of sections section 15-07-10 and 15-08-13. If the land was acquired through the cancellation of a contract for deed, the price shall be not less than the amount due at the time of cancellation. If the land was acquired through foreclosure, the price shall be not less than the amount due at the time of the foreclosure sale. In either case, the purchase price also must include interest on the aforesaid amount at the rate of five percent per annum from the date of the cancellation or the foreclosure sale, as the case may be, and the amount of recording fees paid by the state.

SECTION 4. AMENDMENT. Section 15-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-07-10. Mortgagor has right to repurchase on crop share payment contract before sale of land - Notice to mortgagor. If any mortgagor or his heirs a member of the mortgagor's immediate family, including a father, mother, son, daughter, brother, sister, or spouse, shall desire to repurchase land lost through foreclosure or by a deed given in lieu of foreclosure, such repurchase may be made at a private sale any time before such lands are offered at public sale to the highest bidder. The terms and conditions of any sale under this section must be established by the board of university and school lands, consistent with this title and the fiduciary responsibilities of the board.

SECTION 5. REPEAL. Sections 15-06-33, 15-06-34, 15-06-35, 15-06-36, 15-06-37, 15-07-05, 15-07-06, 15-07-08, 15-07-09, 15-07-11, 15-07-12, 15-07-13, 15-07-14, 15-07-15, 15-07-16, 15-07-17, and 15-07-18 of the North Dakota Century Code are hereby repealed.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 194

SENATE BILL NO. 2469
(Senators Kelsh, Axtman, Richard)
(Representatives Brokaw, Watne, Shockman)

FARM HOME REDEMPTION

AN ACT to provide farmers the right to redeem separate known lots or parcels of property, including a known lot or parcel containing the farmer's home, separately from the remaining property; to amend and reenact section 15-07-04 of the North Dakota Century Code, relating to sale of land by the board of university and school lands; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Declaration of findings. The legislative assembly declares that:

1. This state is suffering from a financial crisis in agriculture that affects the entire economic health of this state.
2. A large number of farm families are in economic distress and are being forced to leave their farms, abandon their investments, and move to other areas. This adversely affects the towns, business communities, and school districts in rural areas.
3. It is in the best interest of the state to protect farm families from the dislocation caused by the financial crisis in agriculture.
4. This Act is enacted pursuant to the police powers of the state in times of economic crisis and in accordance with article XI, section 22, of the Constitution of North Dakota, which requires the legislative assembly to adopt wholesome laws protecting homesteads.

SECTION 2. AMENDMENT. Section 15-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-07-04. Private sale - Terms and prices. Any land sold under the provisions of this chapter shall be sold by public sale except for purchases under the provisions of sections 15-07-10 and 15-08-13. If the land was acquired through the cancellation of a contract for deed, the price shall be not less than the amount due at the time of cancellation. If the land was acquired through foreclosure, the price shall be not less than the amount due at the time of the foreclosure sale less any amount that was paid for the separate redemption of the property designated pursuant to section 4 of this Act. In either case, the purchase price also must include interest on the aforesaid amount at the rate of five percent per annum from the date of the cancellation or the foreclosure sale, as the case may be, and the amount of recording fees paid by the state.

SECTION 3. Separate redemption of known lots or parcels - Notice. In any proceeding to foreclose any mortgage upon agricultural property as defined in subsection 1 of section 57-02-01, including a proceeding pursuant to chapter 15-03, 15-08, 32-19, 32-19.1, or 35-22, the executing creditor shall notify the debtor that the debtor may redeem known lots or parcels including a lot or parcel containing the debtor's home and some of the property surrounding the home separately from the remaining property. The notice required in sections 32-19-20 and 35-22-03 must contain a statement substantially similar to the following:

WARNING: This creditor is seeking foreclosure on agricultural property that may contain your dwelling. Under North Dakota Law, you have the right to separate known lots or parcels of property, including a lot or parcel containing your dwelling and the surrounding property, and have those known lots or parcels sold in the order or sequence you want at the foreclosure sale. The lots or parcels you designate must be described by an accurate legal description. You have the right to redeem the lots or parcels you designate and describe accurately, including the lot or parcel that contains your dwelling, separate from the remaining property that is being foreclosed upon, by paying the purchase price within the redemption period, which is generally one year from the date of the sale. The purchase price for the known lots or parcels is the price bid at the foreclosure sale for those lots or parcels. You should consult with an attorney so you do not lose these valuable rights. You must provide the sheriff and the register of deeds with a legal description of the known lots or parcels you wish to redeem at least ten business days before the date of the scheduled sheriff's sale.

If the creditor is foreclosing by action, an additional copy of the notice must be served with a summons and complaint. If the creditor is foreclosing by advertisement, an additional copy of the notice must be served no later than forty-five days prior to the date of the scheduled sale. The notice must be served in the same manner as service of a summons and complaint.

SECTION 4. Designation of known lots or parcels to be separately redeemed. The debtor may designate the known lots or parcels that are to be sold separately at the foreclosure sale. The known lots or parcels designated may include the home of the debtor, and may include its appurtenances and the surrounding contiguous land. The debtor shall serve a copy of the legal description of the designated lots or parcels on the sheriff and the register of deeds at least ten business days before the date of the scheduled sheriff's sale.

SECTION 5. Sale of property. Any sheriff who receives a designation of the legal description for the known lots or parcels pursuant to section 4 of this Act shall offer and sell those lots or parcels separately from the remaining property. At the foreclosure sale, or in writing at least ten days prior to the sale, the debtor may direct the division of the property into known lots or parcels and may direct the order in which the lots or parcels and the remaining property, or other property may be sold, as provided by section 28-23-07. In order to direct the division of property into known lots or parcels and to direct the order in which those lots or parcels are to be sold, the lots or parcels must have an accurate legal description.

SECTION 6. Redemption of known lots or parcels designated by the debtor after foreclosure. If, on the effective date of this Act, in any proceeding where a debtor has had agricultural property foreclosed upon but the period of redemption has not expired, and the debtor has not received the notice required by section 3 of this Act, the debtor may agree in writing with the purchaser of the agricultural property to separately redeem known lots or parcels that the debtor has designated, including a lot or parcel that contains the debtor's home, appurtenances, and other property. The agreement must be recorded and must include a legal description of the property redeemed and the amount to be paid to redeem the property.

SECTION 7. Rights of redemptioners or purchasers. No redemptioner or purchaser may subsequently redeem or purchase the designated property if the debtor exercises the right to redeem or purchase it.

SECTION 8. Deficiency judgments. A creditor's right to seek a deficiency judgment on the remaining land and debt is not affected by this Act.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 195

HOUSE BILL NO. 1244
(Committee on Industry, Business and Labor)
(At the request of the Board of University and School Lands)

LAND SALE CONTRACT CANCELLATION

AN ACT to amend and reenact sections 15-08-07, 15-08-12, 15-08-13, 15-08-18.1, 15-08-18.3, and 15-08-19 of the North Dakota Century Code, relating to redemption from land sale contract cancellation, cancellation of taxes upon expiration of period of redemption from land sale contract cancellation, and taxation and sale for taxes of land sold on contract; and to repeal section 15-08-14 of the North Dakota Century Code, relating to redemption of lands not listed for taxation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-07. Contracts of purchase - Rights of holder - Recording. A contract of purchase of lands, made pursuant to the provisions of this title, shall entitle the purchaser, his heirs or assigns, to the possession of the lands therein described and to maintain actions for injuries done to the lands or to recover possession thereof, unless the contract has ~~become void by forfeiture~~ been canceled and not redeemed. A contract of purchase in force may be recorded in the manner provided by law for recording of deeds of conveyance.

SECTION 2. AMENDMENT. Section 15-08-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-12. Cancellation of contracts of sale for default - Notice - Recording cancellation. If the annual interest or any installment of the purchase price shall not be paid within thirty days after the same shall become due under the provisions of any contract for sale, or if the taxes shall not be paid upon the lands described in said contract in accordance with the provisions of the contract, the contract shall be voidable from the time of any such default. The board of university and school lands, in the case of any voidable contract, may declare the contract canceled by a resolution adopted for that purpose. Upon such declaration of cancellation, the board

shall notify the holder of the contract by a written notice mailed to his post-office address as shown by its records, and shall cause a certified copy of such resolution to be forwarded to the county auditor. A certified copy of the resolution may be recorded in the office of the register of deeds. The resolution shall operate as a complete and final cancellation of the contract without any order or decree of a court except that the purchaser's rights and liabilities continue until the expiration of the period of redemption. Upon the expiration of the period of redemption after cancellation of any such contract, the board shall order the commissioner to take possession of the land described in the contract and serve notice of the expiration of the period of redemption upon the purchaser and the county auditor. When a contract has been canceled and not redeemed, the land described therein shall not be listed thereafter for taxation until it has been resold or a redemption has been made from such cancellation.

SECTION 3. AMENDMENT. Section 15-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-13. Redemption from cancellation of contracts or foreclosure of mortgages. Where the rights of a purchaser under a contract become forfeited has been cancelled under the provisions of this chapter, such the purchaser, his heirs or assigns, during a period of one year from the date of such cancellation, may pay to the commissioner of university and school lands all past due payments on principal and the amount of interest due and payable on the contract, together with all costs which have been incurred in addition thereto, and interest at the rate of four percent per annum on the interest and costs so due from the date of delinquency to the date of payment, and such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns, and such contract, from the time of such payment, shall be reinstated. As a part of such redemption, he shall pay taxes due or delinquent at the time of the cancellation or foreclosure. If the contract which has been canceled was a contract for crop share payments, the purchaser, his heirs or assigns, to redeem from such cancellation, shall pay all sums delinquent on such contract, including taxes, and shall pay to the commissioner the average of the income from lands described in such contract for the three years preceding such cancellation, for each year from such cancellation to the date of payment, and the further sum of fifty dollars, which shall be credited upon the unpaid principal redemption. When a redemption has been made from the cancellation of any contract, a certified copy of the resolution of the board of university and school lands rescinding the resolution of cancellation shall be forwarded to the county auditor. A certified copy of such resolution may be recorded in the office of the register of deeds in the county in which such land is situated. When a mortgage held by the board has been foreclosed and a sheriff's deed issued to the state, such mortgagor, his heirs or assigns, during the period of one year from the date of such foreclosure, may redeem the lands by paying all past due, deferred, and interest payments, together with all costs which have been incurred through the foreclosure of the mortgage, together with

interest on such sums at the rate of four percent per annum. In the event of redemption of said lands from a foreclosure of a mortgage, the commissioner shall execute and deliver a contract of sale to the purchaser, his heirs or assigns, in the form prescribed by the board. No redemption shall be permitted after the name of a tax purchaser has been substituted in place of that of the contract holder or mortgagor. No redemption shall be permitted of any contract canceled, or mortgage foreclosed prior to July 1, 1963, excepting only during the period of one year from July 1, 1963.

SECTION 4. AMENDMENT. Section 15-08-18.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-18.1. Taxation of public lands sold on contract - Cancellation. Where real property owned by the state of North Dakota as trustee of permanent school funds for the use and benefit thereof is sold upon contract providing for a future conveyance, the department or office making such contract on the part of the vendor shall immediately notify the county auditor of the county wherein the real property is situated, of the making of the contract, the description of the real property therein described, and the name of the vendee. The real property shall be put upon the tax rolls of the county and assessed and the taxes shall be levied thereon, based upon its taxable value on the first day of February next succeeding the date of the contract. Failure to notify the county auditor according to the provisions of this section shall make the commissioner of university and school lands personally liable in a civil action to be brought by the state's attorney of the county wherein the land lies against the commissioner for the amount of the taxes that would have been levied had the notice been given as herein provided. In the event that the contract is canceled by the vendor and not redeemed, the taxes shall be immediately canceled and stricken from the tax rolls by the county auditor upon notice of such cancellation expiration of the period of redemption being given to him by the vendor.

SECTION 5. AMENDMENT. Section 15-08-18.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-18.3. Taxation upon ~~reinstatement of contract or sale to vendee under preference right~~. In the event that a vendee governed by the provisions of section 15-08-18.1, or his heirs, ~~shall redeem real property from cancellation and have his contract reinstated under any law granting such right of reinstatement, or in the event that such a vendee or his heirs purchases real property under the terms and conditions of any law granting a preference right of purchase, the taxes levied upon the real property under the provisions of section 15-08-18.1 shall be a lien upon the interest of the vendee and his heirs, but not as against the vendor, and shall become delinquent and shall be collected as other real property taxes become delinquent and are collected~~. Immediately upon ~~a contract being reinstated or~~ real property being repurchased as herein provided, the vendor shall notify the county auditor in

the same manner as is provided for by section 15-08-18.1 and the real property shall be assessed and taxes levied thereon, subject to further subsequent cancellation of the reinstated or new contract, and the resulting cancellation of the taxes on the property concerned. If real property is repurchased for cash by a vendee or his heirs under a preference right to do so, ~~or when property is conveyed pursuant to a reinstated contract,~~ the taxes levied against the interest of the vendee shall be paid in addition to any sum required to be paid by the law under which the purchaser is granted a preference right of purchase.

SECTION 6. AMENDMENT. Section 15-08-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08-19. Taxation and sale for taxes of land sold by state on deferred payment contract. Lands contracted to be sold by the state shall be subject to taxation from the date of the contract, and the taxes assessed thereon shall be collected and enforced in the same manner as taxes against other lands. If the contract is not canceled or if the contract has been canceled and the period of redemption has not yet run, the lands upon which taxes are delinquent may be sold for taxes as other lands are sold. After the expiration of three years from the date of the tax sale certificate, and after notice of expiration of the period of redemption has been given as required in title 57, and after expiration of the time to redeem given under such notice, the purchaser at the tax sale shall acquire such rights and interests as belonged to the holder and owner of the contract issued under the provisions of this chapter and only such rights. The holder of the tax sale certificate may present the same, together with a certificate from the county auditor that notice of expiration of the time for redemption has been given and that no redemption has been made, to the commissioner of university and school lands, and thereupon may have his name substituted in the contract for that of the original holder and owner of the contract as the assignee of such original holder and owner, upon condition that he shall make payment of any principal or interest then in default under the contract of sale. If the lands are sold to the county for taxes, the county may assign its tax sale certificate at any time, and the assignee shall have the rights given by this section to the holder of a tax sale certificate issued to an individual. No tax deed shall be issued upon any tax sale certificate while the legal title to the lands remains in the state of North Dakota.

SECTION 7. REPEAL. Section 15-08-14 of the North Dakota Century Code is hereby repealed.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 196

HOUSE BILL NO. 1504
(Stofferahn, Klundt, Watne, Myrdal)

DEBTOR ASSISTANCE PROGRAM NOTICE

AN ACT to require creditors or vendors, in all proceedings to foreclose a mortgage or cancel a contract for the sale of agricultural property, to advise the debtor of the existence of available state administered or sponsored assistance programs; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Notice to debtors of assistance programs in actions to foreclose a mortgage or cancel a contract. In all proceedings by an executing creditor, vendor, or successor in interest to foreclose any mortgage upon or cancel any contract for the future conveyance of agricultural property as defined in subsection 1 of section 57-02-01, including proceedings pursuant to chapters 15-03, 15-08, 32-18, 32-19, 32-19.1, and 35-22, the notice required in sections 32-19-20, 35-22-03, 15-08-12, and 32-18-01, must contain a statement containing a list of appropriate state assistance programs compiled by the commissioner of agriculture advising the debtor as to the existence of state administered or sponsored programs in this state directed at providing assistance to financially distressed farmers. This section does not apply to a creditor, vendor, or successor in interest who is an individual or a farm corporation authorized under chapter 10-06.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 197

HOUSE BILL NO. 1300
(Representatives Martinson, A. Hausauer, Halmrast)
(Senators Lips, Nelson, Heinrich)

BISMARCK STATE COLLEGE

AN ACT to amend and reenact subsection 6 of section 15-10-01 and subdivision d of subsection 13 of section 15-10-17 of the North Dakota Century Code, relating to the name of Bismarck college.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 15-10-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. The following junior colleges and off-campus educational center: Bismarck ~~junior state~~ college, Lake Region community college, and the university of North Dakota - Williston center.

SECTION 2. AMENDMENT. Subdivision d of subsection 13 of section 15-10-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Employees of Bismarck ~~junior state~~ college and Lake Region community college coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect prior to July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of the above-named colleges who becomes a member of the alternate retirement program may elect prior to July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 198

HOUSE BILL NO. 1456
(R. Berg, G. Berg, Cleveland)

HIGHER EDUCATION FACULTY ENGLISH PROFICIENCY

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to an English language proficiency requirement for faculty of state institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Faculty - English language proficiency. Any professor, instructor, teacher, or assistant at a state institution of higher education must exhibit proficiency in the English language. Any deficiency must be remedied by special training or coursework provided by the institution.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 199

SENATE BILL NO. 2363
(Senator Satrom)
(Representative Martinson)

ALTERNATE RETIREMENT PROGRAM

AN ACT to create and enact a new subdivision to subsection 13 of section 15-10-17 of the North Dakota Century Code, relating to transfer of contributions from the public employees retirement system to the alternate retirement program for employees at institutions under the control of the state board of higher education; to provide for limited retroactive effect of this Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 13 of section 15-10-17 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Employees of institutions under the control of the state board of higher education who are members of the public employees retirement system, who become entitled to participate in the alternate retirement program, and who transfer the employee's contribution to that program, are entitled to a transfer of contributions in accordance with this subdivision. An eligible employee is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, transferred by the board of trustees of the public employees retirement system to that employee's account in the alternate retirement program. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.

SECTION 2. LIMITED RETROACTIVE EFFECT OF ACT. This Act is retroactive for employees who became eligible for membership in the alternate retirement program after June 30, 1984, but before the effective date of this Act, and who transferred their employee's contribution to the alternate retirement program before the effective date of this Act.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 200

HOUSE BILL NO. 1273
(Strinden, Kelly, Kloubec, Shaft)

INSTITUTIONAL RESEARCH CONFIDENTIALITY

AN ACT to create and enact a new subsection to section 15-10-17 of the North Dakota Century Code, relating to the powers and duties of the board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-10-17 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To adopt rules to protect the confidentiality of proprietary information received from sponsors of research conducted by the institutions as well as information generated by that research. No rule promulgated by the board may in any way limit or otherwise affect the applicability or implementation of any rule or regulation of the state department of health. Each grant or contract involving confidential information must be explained in the institution's report to the board of grants and contracts received and must be reviewed at the board's public meeting.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 201

SENATE BILL NO. 2418
(Schoenwald)

RESIDENT VETERAN TUITION WAIVER

AN ACT to amend and reenact section 15-10-18.2 of the North Dakota Century Code, relating to the definition of resident veteran.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-18.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-10-18.2. Definitions.

1. "Dependent" for purposes of section 15-10-18.3 means any child of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action.
2. "Resident veteran" means a ~~person~~ veteran who:
 - a. Was born in and lived in this state until entrance into the armed forces of the United States;
 - b. Was born in, but was temporarily living outside this state, not having abandoned residence therein prior to entrance into the armed forces of the United States;
~~or~~
 - c. Was born elsewhere but had resided within this state for at least six months prior to entrance into military service and had prior to or during such six-month period:
 - (1) Registered for voting, or voted in this state;

- (2) Being an unemancipated minor during such period of residence, had lived with a parent or person standing in loco parentis who had acquired a residence as set forth in this section; or
 - (3) If not registered for voting in this state, not registered for voting in another state; or
- d. Has been a resident of this state for the ten years prior to the request for tuition waiver.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 202

HOUSE BILL NO. 1204
(Committee on Education)
(At the request of the Attorney General)

TUITION FOR SURVIVORS OF PUBLIC SERVANTS

AN ACT to create and enact two sections to chapter 15-10 of the North Dakota Century Code, relating to free tuition in North Dakota institutions of higher education for survivors of firefighters or peace officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. For purposes of section 2 of this Act:

1. "Firefighter" means a person who is a member of a paid or volunteer fire department that is a part of, or administered by, this state, any political subdivision of this state, or a rural fire protection district.
2. "Peace officer" means any person who is employed by a state law enforcement agency or a political subdivision of the state who is charged with the prevention and detection of crime and the enforcement of the criminal laws of the state, and who has full power of arrest.
3. "Survivor" means the children under the age of twenty-one and the spouse of a firefighter or peace officer at the time of the firefighter's or peace officer's death.

SECTION 2. A new section to chapter 15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Free tuition in North Dakota institutions of higher education for survivor of firefighter or peace officer. Should a firefighter or peace officer die as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, must be allowed to obtain a bachelor's degree, or certificate of completion, for so long as the survivor is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds; provided, however, that the bachelor's degree or certificate of completion is earned within a thirty-six month or eight-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 203

SENATE BILL NO. 2196
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

HIGHER EDUCATION EMPLOYEE EXPENSES

AN ACT to amend and reenact section 15-10-25 of the North Dakota Century Code, relating to the payment of mileage and travel expenses for employees of institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-10-25. Abstracts of expenditures and payroll to the office of management and budget. An officer designated by the state board of higher education for each educational institution under its control shall prepare an abstract of expenditures and payroll, each month, or at such other times as may be necessary, showing the name and amount due each claimant, and the fund from which the payment shall be made, and shall certify that all expenditures were incurred in accordance with law. The abstract shall be submitted to the office of management and budget and a warrant-check shall be prepared for the total amount claimed in the abstract against each fund. The funds disbursed shall be deposited in the Bank of North Dakota to the credit of the appropriate institution and shall be subject to individual checks by such institution. One copy of the abstract shall be kept on file by the office of management and budget, one copy shall be retained by the officer making the abstract, and one copy shall be filed with the treasurer of the institution.

Mileage and travel expense payments for employees of institutions of higher learning shall be made upon the submission of vouchers ~~for the approval of or abstracts approved by the office of the budget.~~ The office of management and budget shall prepare warrant-checks drawn on the state treasurer against the appropriate fund for such mileage and travel expense payments, which payments board of higher education or an officer designated by the board for each educational institution under its control. Payments shall not exceed the amounts allowed for other state officials and employees.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 204

HOUSE BILL NO. 1540
(Gerntholz, V. Olson, Thompson)

SELECTIVE SERVICE REGISTRATION

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to registration with the selective service as a requirement for receipt of student financial aid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Student registration with selective service system. No person who is required by the Military Selective Service Act [Pub. L. 759; 62 Stat. 604; 50 U.S.C. App. 451 et seq.] to register with the selective service system may receive student financial aid funds from the state until that person has registered. The state board of higher education may adopt rules to achieve the purpose of this section.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 205

SENATE BILL NO. 2471
(Senators Mushik, J. Meyer, Nalewaja)
(Representatives Kelly, Wentz, Moore)

CHILD WELFARE RESEARCH BUREAU

AN ACT to establish a child welfare research bureau at the university of North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Child welfare research bureau - Establishment - Director.

1. A child welfare research bureau is hereby established to be administered and funded by and in conjunction with the university of North Dakota.
2. A director shall be appointed by the university. The director shall manage the bureau, hire necessary personnel, and prepare a biennial budget. The university shall fix the salaries of the director and bureau personnel, and may remove the director for cause.

SECTION 2. Functions. The purpose of the child welfare research bureau shall be to conduct applied research on matters pertaining to the welfare of children and youth in this state. The bureau may render services consistent with its purpose, including:

1. Compilation, analysis, publication, and dissemination of statistics, summaries, and other information relating to research conducted on matters pertaining to the welfare of children and youth.
2. Technical assistance to public and nonprofit private agencies and organizations to assist them in planning, improving, developing, and carrying out programs and activities that serve children and youth.

SECTION 3. Gifts and grants. The child welfare research bureau may contract for and benefit from private contributions, gifts, and grants from the federal government, private organizations, and other sources pursuant to section 15-10-12.

SECTION 4. APPROPRIATION - BUDGET SECTION APPROVAL. There is hereby appropriated, upon approval of the budget section of the legislative council, any moneys as may become available from federal, private, and other funds to the university of North Dakota for the biennium beginning July 1, 1987, and ending June 30, 1989, for the purpose of establishing a child welfare research bureau at the university of North Dakota.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 206

HOUSE BILL NO. 1293
(Representatives Lindgren, Moore)
(Senator Dotzenrod)

NDSU PUBLICATIONS

AN ACT to amend and reenact section 15-12-12 of the North Dakota Century Code, relating to the publication by the county commission and county extension agent of services and publications available through North Dakota state university.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-12-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-12-12. North Dakota state university services and publications - County auditor - Duty Publication of information. Each county auditor shall cause the list of publications of the North Dakota state university of agriculture and applied science, as furnished by the state university, to be published in the official newspaper of the county for one issue during the first week in June of each year commission shall, jointly with the county extension agent, publish quarterly in the official county newspaper an advertisement, approximately 3 x 10 SAU in size, describing the free publications available from the cooperative extension service of North Dakota state university and the services available through the county extension office. The cost of the advertisement, based upon the legal advertising rate provided in section 46-05-03, shall be determined in consultation with the North Dakota newspaper association and shall be shared equally by the county and the cooperative extension service of North Dakota state university. The county auditor shall furnish the advertisement to the newspaper from information furnished by the county extension agent.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 207

HOUSE BILL NO. 1164
(Committee on Social Services and Veterans Affairs)
(At the request of the Highway Department)

DEPUTY TOXICOLOGISTS

AN ACT to amend and reenact section 15-12-21 of the North Dakota Century Code, relating to the authority of the state toxicologist to appoint deputy state toxicologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-12-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-12-21. State toxicologist - Duties - Fees - Confidentiality. The office of state toxicologist shall be maintained in conjunction with the college of pharmacy at the North Dakota state university of agriculture and applied science, for the purpose of providing toxicological services to any person or the state or any political subdivision utilizing such services. The president of the North Dakota state university of agriculture and applied science, with the advice of the dean of the college of pharmacy, shall employ the services of a qualified toxicologist who shall be ex officio state toxicologist. The state toxicologist may designate a qualified deputy state toxicologist to exercise the authority and responsibility prescribed by law for the state toxicologist. The deputy state toxicologist shall serve at the pleasure of the state toxicologist. The toxicologist may charge fees for services rendered. Such fees shall be set by the state toxicologist, with the approval of the dean of the college of pharmacy and shall be turned over monthly to the state treasurer and credited to the state general fund. The state toxicologist shall be available to the college of pharmacy for such other duties as the dean thereof shall designate. The results of toxicological or chemical testing or analysis made by the office of state toxicologist at the request of law enforcement agencies for criminal investigation or at the request of physicians for clinical evaluation and treatment shall not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the office of state toxicologist to anyone other than the person or agency requesting the test or analysis, or to any person upon whom the toxicological or chemical test was performed or his authorized representative, except the state toxicologist may, in his discretion, permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein. The provisions of this section shall not apply to section 39-20-13.

* NOTE: Section 15-12-21 was also amended by section 1 of House Bill No. 1120, chapter 208.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 208

HOUSE BILL NO. 1120
(Committee on State and Federal Government)
(At the request of the State Board of Higher Education)

TOXICOLOGIST FEES

AN ACT to amend and reenact section 15-12-21 of the North Dakota Century Code, relating to fees charged by the state toxicologist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-12-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-12-21. State toxicologist - Duties - Fees - Confidentiality. The office of state toxicologist shall be maintained in conjunction with the college of pharmacy at the North Dakota state university of agriculture and applied science, for the purpose of providing toxicological services to any person or the state or any political subdivision utilizing such services. The president of the North Dakota state university of agriculture and applied science, with the advice of the dean of the college of pharmacy, shall employ the services of a qualified toxicologist who shall be ex officio state toxicologist. The toxicologist may charge fees for services rendered. Such fees shall be set by the state toxicologist, with the approval of the dean of the college of pharmacy and shall be ~~turned over monthly to the state treasurer and credited to the state general fund deposited in the toxicologist's operating fund under section 15-10-12.~~ The state toxicologist shall be available to the college of pharmacy for such other duties as the dean thereof shall designate. The results of toxicological or chemical testing or analysis made by the office of state toxicologist at the request of law enforcement agencies for criminal investigation or at the request of physicians for clinical evaluation and treatment shall not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the office of state toxicologist to anyone other than the person or agency requesting the test or analysis, or to any person upon whom the toxicological or chemical test was performed or his authorized representative, except the state toxicologist may, in his discretion, permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein. The provisions of this section shall not apply to section 39-20-13.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 15-12-21 was also amended by section 1 of House Bill No. 1164, chapter 207.

CHAPTER 209

HOUSE BILL NO. 1643
(C. Nelson)

GENERAL EQUIVALENCY CERTIFICATE FEES

AN ACT to authorize the superintendent of public instruction to charge fees for copies of general equivalency certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. General equivalency certificates - Fees for copies. The superintendent of public instruction may charge a fee of not to exceed three dollars for each general equivalency certificate issued by the superintendent of public instruction, a fee not to exceed ten dollars for certified copies of general equivalency certificates, and a fee of two dollars for copies of transcripts of persons earning general equivalency certificates. Any moneys derived from fees generated under this section must be deposited in the revolving printing fund in the state treasury and may be expended by the superintendent of public instruction to cover costs of administering this section.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 210

HOUSE BILL NO. 1278
(Representatives O'Connell, Kolbo, Myrdal)
(Senators Kelly, Heinrich, Peterson)

SCHOOL DISTRICT ELECTIONS

AN ACT to amend and reenact section 15-22-23, subsection 1 of section 15-28-03, and sections 15-28-04 and 15-28-07 of the North Dakota Century Code, relating to the date of school district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-22-23 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-23. County superintendent of schools to publish notice of annual election. At least fourteen days before the annual election, the county superintendent of schools in each county shall publish, in the official newspaper of the county, notice that annual elections will be held on the first or second Tuesday in June a date between April first and June thirtieth in public school districts. If no newspaper is published in the county, the notice ~~shall~~ must be published in a newspaper in an adjoining county in the state.

SECTION 2. AMENDMENT. Subsection 1 of section 15-28-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An annual election ~~shall~~ must be held in each public school district on the first or second Tuesday in June a date between April first and June thirtieth, at the discretion of the school board, ~~of each year~~. At each annual election, members of the school board ~~shall~~ must be elected to fill all vacancies therein caused by the expiration of terms of office or otherwise. Each member elected shall serve for a term of three years, except when elected to serve an unexpired term. ~~Such~~ The term ~~shall commence on~~ of any elected member commences at the second Tuesday annual meeting in July following ~~his~~ the member's election, and ~~he shall continue~~ continues until ~~his~~ a successor is elected and qualified. In addition to the

annual election, a special election may be held at any time, if approved by a resolution of the school board. ~~Such election may be held,~~ for any purpose provided for by law.

SECTION 3. AMENDMENT. Section 15-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-04. Election precincts, polling places, and officers. At least ~~fourteen~~ thirty-five days prior to the ~~Tuesday in June~~ date chosen for the annual election ~~in each year,~~ the school board of each public school district, by motion or resolution, shall designate one or more precincts and polling places for the school election. ~~Such~~ The precincts shall ~~must~~ be arranged so as to divide the electors in the district as nearly equally as possible, and no precinct ~~shall~~ may have a population in excess of six thousand residents as shown by the last federal decennial census. The polling places established in ~~such~~ the precincts ~~shall~~ must be located as conveniently as possible for the voters in the precinct, and a polling place once established by the board ~~shall~~ must remain the polling place for the precinct until it is changed by subsequent action of the board. The board shall appoint two persons to act as judges and two persons to act as clerks of the election in each precinct. Before opening the polls, each of the judges and clerks shall take an oath or affirmation ~~that he will to perform his~~ the duties ~~as of judge or clerk,~~ as the case may be, according to law and to the best of ~~his~~ the judge's or clerk's ability. The oath or affirmation may be administered by any officer authorized to administer oaths, or by any of the judges or clerks to the others.

SECTION 4. AMENDMENT. Section 15-28-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-07. Notice of election - Form. The notice of election ~~shall~~ must be in substantially the following form:

Notice is hereby given that on Tuesday -----, (insert the day of the week) the ----- day of June -----, -----, annual elections will be held for the purpose of electing member(s) of school boards, and the polls will be open at ----- a.m. ----- (insert time standard) and will close at ----- p.m. ----- (insert time standard) of that day.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 211

HOUSE BILL NO. 1153
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT BOUNDARIES

AN ACT to amend and reenact subsection 5 of section 15-27.1-06 of the North Dakota Century Code, relating to the powers of the county committee and the state board of public school education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 15-27.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Establish standards by the adoption of rules to govern the county committees and state board in the development and approval of school district reorganization plans or reorganization, annexation, and dissolution proposals. The standards must require any school district to be formed under any plan or proposal providing for the operation of a high school to have sufficient tax base and fiscal capacity to clearly permit the district to offer the minimum curriculum prescribed by section 15-41-24 taught by teachers possessing the qualifications required by section 15-41-25. Exceptions to the standards may be allowed by a county committee or the state board only in extreme cases where because of sparsity of population or geographical barriers it is impossible to obtain compliance with them. ~~The county committees or the state board may not approve any reorganization, annexation, or dissolution proposal unless it has logical boundaries following a uniform pattern without undue irregularities.~~

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 212

SENATE BILL NO. 2044
(Legislative Council)
(Interim Education Finance Committee)

NONOPERATING SCHOOL DISTRICTS

AN ACT to create and enact a new section to chapter 15-27.1 of the North Dakota Century Code, relating to the reorganization, annexation, or dissolution of nonoperating school districts; and to amend and reenact section 15-27.4-01 of the North Dakota Century Code, relating to the dissolution of school districts not operating schools and attachment of their territory to school districts operating schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-27.1 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reorganization, annexation, or dissolution of school district not operating a school - Transportation. Any school district in this state which is not operating either an approved elementary or high school within its boundaries on the effective date of this Act, unless it begins operating an approved elementary or high school prior to July 1, 1989, and any school district that may cease to operate either an approved elementary or high school within its boundaries after the effective date of this Act, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall become, through the process of reorganization, annexation, or dissolution as provided by law, a part of a school district operating an approved elementary or high school. Any school district not operating either an approved elementary or high school within its boundaries on the effective date of this Act, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization with or annexation to an operating school district by July 1, 1989. Any school district that ceases to operate either an approved elementary or high school within its boundaries after the effective date of this Act, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization or annexation within two years from the date the school district ceased to operate either an approved elementary or high school. Any

student who resides within a school district which is annexed to or reorganized with another district or districts pursuant to this Act, and which has been sending students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district. The students in any district that is attached by annexation, reorganization, or dissolution pursuant to this Act must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by this Act which does not reorganize or annex itself to an operating school district within the time limit prescribed in this Act shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4.

SECTION 2. AMENDMENT. Section 15-27.4-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.4-01. Dissolution of public school districts - Responsibility of county committee - Duty of county superintendent. The county committee shall forthwith schedule and provide notice of a public hearing to dissolve a school district and attach the territory to other school districts upon the following occurrences:

1. Receipt by the county committee of notice from the county superintendent that:
 - a. A school district can no longer levy sufficient taxes to carry on normal school operations;
 - b. A school district within the county has not operated a school by the thirty-first of December of the year following the calendar year in which such operation ceased, providing fifty percent of the pupils from such school district are not attending schools in another state as is required by section 1 of this Act;
 - c. There exists territory not organized into a school district; or
 - d. Any portion of a school district within the county has been severed from the district by the expansion and growth of a city and the severed portion is not contiguous with the district.
2. When any portion of a school district has been left out of a school district reorganization, the county committee shall, within forty-five days after voter approval of the school district reorganization proposal, order a hearing

pursuant to section 15-27.4-02 for the purpose of determining to which school district or districts the remaining territory should be attached.

After approval by the state board of the proposed dissolution, the county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory are entitled to vote and hold office in the school district to the same extent as all other qualified electors residing in the district, and the territory is part of the school district as fully in every respect as if it had been included in the district when organized. This section does not prevent the district from providing for the education of the children to the extent that its current budget in the judgment of the school board will permit, or relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. This section does not change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 213

SENATE BILL NO. 2520
(Moore)

ANNEXED SCHOOL DISTRICT FUNDS

AN ACT to amend and reenact subsection 6 of section 15-27.2-04 of the North Dakota Century Code, relating to credit for residents of annexed school districts that have surplus funds prior to the annexation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 15-27.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. If the annexation is approved by the state board, the county committee may cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness shall be a credit for the residents of the annexed school district against taxes levied by the receiving school district in the year or years following the annexation depending on the average local effort based on the previous five-year average as calculated by the county superintendent. If a school district is attached to more than one school district, the credit that the residents of the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to annexation.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 214

SENATE BILL NO. 2211
(Committee on Education)
(At the request of the Superintendent of Public Instruction)

ANNEXATION PETITIONS

AN ACT to amend and reenact subsection 8 of section 15-27.2-04 of the North Dakota Century Code, relating to the submission of annexation petitions to the county committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 15-27.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Whenever a petition for annexation has failed to be approved by any county committee, a petition involving any of the same area may not be submitted to the county committee for a period of three months and such after the filing of the petition. The petition may not be submitted to the county committee more than twice in twelve consecutive months.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 215

SENATE BILL NO. 2209
(Committee on Education)
(At the request of the Superintendent of Public Instruction)

STATE BOARD ANNEXATION CONSIDERATION

AN ACT to amend and reenact subsection 9 of section 15-27.2-04 of the North Dakota Century Code, relating to the submission of annexation petitions to the state board of public school education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 15-27.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Whenever a petition for annexation has failed to be approved by the state board, a petition involving any of the same area may not be submitted to the state board for a period of three months ~~and such~~ after the filing of the petition. The petition may not be submitted to the state board more than twice in twelve consecutive months.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 216

HOUSE BILL NO. 1275
(Hamerlik)

SCHOOL DISTRICT REORGANIZATION

AN ACT to amend and reenact section 15-27.3-19 of the North Dakota Century Code, relating to changes in approved school district reorganization proposals; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.3-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.3-19. Changes in reorganization proposal. At any time after the reorganization proposal has become effective, any provision of the reorganization proposal theretofore or thereafter adopted, including provisions affecting the adjustment of assets and liabilities but excepting provisions defining the boundaries of the district, may be changed by a majority vote of the qualified electors without approval of the state board or the county committee. The school board in the reorganized district may, upon its own motion, or shall, upon the filing with it of a petition signed by a number of qualified electors equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year the census was taken, unless the census is greater than four thousand, in which case only fifteen percent of the number of persons enumerated in the school census, is required, submit the question of authorizing a change in the school district's adopted reorganization proposal at the next regular or special election. However, not fewer than twenty-five signatures of qualified electors is required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the county superintendent for the county in which the school is located shall determine the number of qualified electors in the qualified district. If a majority of all votes cast by the electors residing in each of the geographic areas is in favor of the proposed change, then the proposed change is effected. However, a school board in a reorganized school district may change, by resolution, to at large voting for school board candidates if there is a variance of more than ten percent in the population between any of the district's established geographic areas with resident candidates.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 217

HOUSE BILL NO. 1276
(Hamerlik)

SCHOOL BOARD RURAL MEMBERS

AN ACT to amend and reenact section 15-28-02 of the North Dakota Century Code, relating to the election of rural members to school boards; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-28-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-02. Rural members of school board. When a school district is composed of six or more sections of land having a city within its boundaries and when the population of the school district does not exceed two thousand persons, at least two members of the school board shall be residents upon farms outside the corporate limits of the city. When a school district is composed of six or more sections of land and has within its boundaries a city with a population of more than two thousand but less than fifteen thousand persons, and has at least twenty-five families residing upon farms outside the corporate limits of the city but upon farmsteads located within the school district and sending children to school in such school district, at least one member of the board shall be a resident upon a farm outside the corporate limits of the city. ~~Provided, that when~~ However, if the taxable valuation of the rural area of a school district containing a city is greater than the taxable valuation of the urban area of the district, the majority of the members of the school board shall reside upon farms outside the corporate limits of the city; provided, that all voters of the school district, regardless of whether the district is reorganized, are entitled to vote for each candidate to the school board whenever the variance in population between any of the geographic voting areas of the school district is in excess of ten percent.

For purposes of this section, school board members shall be considered as rural members and as residing upon a farm if they reside within a city that according to the latest federal census has a population of two hundred or less and is located within a school district that has four or more incorporated cities within its boundary.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 218

SENATE BILL NO. 2446
(Senators Heinrich, Kelly)
(Representatives Myrdal, V. Olson)

SCHOOL DISTRICT BUSINESS MANAGER

AN ACT to amend and reenact sections 15-29-03, 15-29-03.1, 15-29-04, 15-29-06, subsection 12 of section 15-29-08, sections 15-29-09, 15-29-10, 15-29-11, and 15-29-13 of the North Dakota Century Code, relating to changing references from school district clerk to school district business manager; and to change statutory references from clerk of the school district to business manager of the school district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-03. Organization of school board - Election of president - Appointment of clerk business manager. At the annual meeting, the school board shall elect from among its members a president who shall serve for one year. The board shall appoint a clerk business manager who is not a member of the board who shall hold ~~his~~ office during the pleasure of the board and receive such compensation for ~~his~~ services as shall be fixed by the board.

SECTION 2. AMENDMENT. Section 15-29-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-03.1. School district clerk business manager to be substituted for school district treasurer and clerk. ~~It is the intent of the legislative assembly that the clerk~~ The business manager of any public school district shall be substituted for, take any action previously taken by, and shall perform any duties previously performed by the treasurer and the clerk of such public school district.

SECTION 3. AMENDMENT. Section 15-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-04. Duties of president. The president shall preside at all meetings of the board, appoint all committees subject to approval of the board, sign all warrants ordered by the board to be drawn upon the ~~clerk~~ business manager for school moneys, and perform other acts required by law. In the absence of the president at any meeting, a president pro tempore may be elected by the board.

SECTION 4. AMENDMENT. Section 15-29-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-06. Vacancies on school board - How filled. The school board shall have power to fill by appointment any vacancy which may occur on the board. An appointee shall hold ~~his~~ office until the next annual election and until ~~his~~ a successor is elected and qualifies. When any such appointment is made, the ~~clerk~~ business manager shall certify the same to the county superintendent of schools. In the event that the school board shall fail to fill such vacancy within sixty days after notice of a vacancy has been filed with the county superintendent of schools, the county superintendent shall call a special election for the purpose of filling the vacancy. Such election shall be conducted in the same manner as the annual school election. A vacancy shall occur on the school board by death, resignation, removal from the school district, or otherwise. Any school officer may be removed from office by a court of competent jurisdiction as provided by law, and in such event a vacancy shall exist.

SECTION 5. AMENDMENT. Subsection 12 of section 15-29-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. To defray the necessary and contingent expenses of the board, including the compensation of its ~~clerk~~ business manager.

SECTION 6. AMENDMENT. Section 15-29-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-09. Duties of the ~~clerk~~ business manager of the school board. The ~~clerk~~ business manager of the school board shall:

1. Keep a true and complete record of all of the proceedings of the school board.
2. Take charge of all the books and documents of the district and deliver them to ~~his~~ the business manager's successor in office.
3. Prepare and submit to the board and to the county superintendent of schools an annual report which shall contain such items as may be required by the superintendent of public instruction.

4. Countersign all warrants for school moneys drawn upon the ~~school district clerk~~ business manager by order of the board.
5. Perform all duties ~~enjoined upon him~~ required of the business manager under title 57 and title 21.
6. Perform such other duties as the board may require.
7. Keep a separate true and correct account of the receipts and expenditures of each fund of the district.
8. Prepare and submit quarterly to the board a written report of the state of the finances of the district, and to submit such report at any other time upon the request of the board; provided, however, that in school districts in which are located only one-room or two-room schools, the ~~clerk~~ business manager shall be required to submit such a report only upon the request of the board.
9. Produce at any meeting of the board or of any committee appointed to examine his accounts, whenever ordered to do so by the board, all of the books and papers pertaining to ~~his~~ the business manager's office.
10. Keep safely in ~~his~~ possession or under ~~his~~ control all school moneys coming into ~~his~~ the business manager's hands.
11. Pay out district moneys under ~~his~~ the business manager's control in accordance with ~~the provisions of~~ section 15-29-13. The form of warrant shall be prescribed by the superintendent of public instruction and shall be so drawn that when signed by the ~~clerk~~ business manager in an appropriate place it becomes a check on the school district depository.
12. Receive and have custody of all moneys from every source which the school board of the district is authorized to receive.
13. Attend meetings of the board, when requested, and perform all duties required of him under title 57 and title 21.

SECTION 7. AMENDMENT. Section 15-29-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-10. District records open to examination - Records as evidence. The records, vouchers, and papers of the district are open to examination by any taxpayer of the district. These records, or a transcript thereof certified by the ~~clerk~~ business manager, must be received in all courts as prima facie evidence of the facts therein set forth.

SECTION 8. AMENDMENT. Section 15-29-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-11. Clerk's Business manager's bond. The clerk business manager of each school district shall furnish to the school district a bond conditioned that he the business manager will honestly and faithfully discharge the duties of his office and that he the business manager shall safely keep and render a true account of all funds and property that shall come into his the business manager's hands as such clerk business manager, and pay and deliver the same according to law. Such bonds shall be in an amount to be fixed by the school board but shall be not less than twenty-five percent of the maximum amount of money that shall be subject to the clerk's business manager's control at any one time.

SECTION 9. AMENDMENT. Section 15-29-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-13. Form of warrants - How warrants paid by clerk business manager - Activities fund - Incidental revolving fund. The clerk business manager shall pay out moneys only upon the presentation of a warrant signed by the president of the board, and only if there is money in his the business manager's hands or subject to his the business manager's order sufficient for the payment thereof. The form of warrant to be used by a school district shall be prescribed by the superintendent of public instruction. When making payment of a warrant on school district funds, the school district clerk business manager shall countersign the warrant and insert the name of the depository bank thereon, and the warrant, when so countersigned, shall become a check on the school district depository. Immediately upon countersigning any warrant and inserting the name of the depository bank thereon, he the business manager shall enter the payment in his clerk's the record. The clerk business manager shall not issue a check on the depository bank except as provided in this section.

The school board by resolution shall establish an activities fund for the support of various extracurricular activities under the auspices of the school board. Receipts from extracurricular activities shall be deposited in the activities fund. The school district clerk business manager shall pay out moneys only upon the presentation of a warrant signed by the president of the board and countersigned by the clerk business manager. The superintendent of schools shall submit to the school board a monthly report of receipts, expenditures, and balances in each account in the activities fund.

The school board may, by resolution, establish an incidental revolving fund in the depository bank and designate the superintendent of schools or such other school administrator as the board may select to draw checks directly on such fund for such incidental expenses as the school board may direct in the resolution. The amount to be retained in such fund shall be established by the school board and drawn from the general fund.

The superintendent or other school administrator designated to draw checks on such fund shall submit a monthly report to the school board listing the checks drawn, the payee, and the purpose for which the check was drawn.

SECTION 10. Clerk of school district renamed business manager of school district. Wherever the terms "clerk of the district", "clerk of the school district", "school district clerk", "district clerk", "clerk of the school board", or any derivative of these terms which, when used in context indicates an intention to refer to the clerk of any public school district, appear in the North Dakota Century Code, the term "business manager of the school district", or an appropriate derivative of that term, is to be substituted for the relevant term.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 219

SENATE BILL NO. 2423
(Peterson, Maxson)

TEACHER'S CERTIFICATES

AN ACT to amend and reenact sections 15-36-15, 15-36-16, and 15-38-19 of the North Dakota Century Code, relating to the authority of the superintendent of public instruction to suspend, revoke, or annul teachers' certificates, and the certificate proceedings conducted by and the authority of the teachers' professional practices commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-36-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-36-15. Revocation of teacher's certificates - Grounds - Effect. The superintendent of public instruction ~~shall~~ may suspend for a period of time, or revoke and annul any teacher's certificate granted in this state upon any or all of the following grounds:

1. For any cause which would have authorized or required ~~him~~ the superintendent to refuse to grant the certificate if the facts were known at the time when the certificate was granted.
2. For incompetency, immorality, intemperance, or cruelty of the certificate holder.
3. For the commission, by the The certificate holder, of a crime as defined in the laws of has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or of the United States before any federal court, of an offense determined by the superintendent of public instruction to have a direct bearing upon a person's ability to serve the public as a teacher, or the superintendent of public instruction determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

4. For the refusal by the certificate holder to perform his duty as the duties of a teacher or for his the general neglect of the work of the school.
5. For the breach, by the certificate holder, of his a contract with any school district.
6. Serious violation or a series of violations of the professional codes and standards promulgated in accordance with law.

The revocation of a certificate shall terminate the employment of the holder of such certificate in the school in which he the holder is employed when the certificate is revoked, but the teacher holder shall be paid to the time he received the notice of the revocation was received. Appeals from any order of revocation may be taken to the district court of Burleigh County as provided by chapter 28-32.

SECTION 2. AMENDMENT. Section 15-36-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-36-16. Proceedings to suspend, revoke, or annul certificate. The superintendent of public instruction may upon his own motion, or, upon the receipt of a formal complaint by the teachers' professional practices commission alleging grounds for the revocation or suspension for a period of time of any person's teacher's certificate shall make such preliminary investigation as he may deem necessary, and if it shall appear probable that such grounds exist, he shall proceed with to suspend for a period of time, revoke, or annul any person's teacher's certificate as set forth in subsections 1, 2, 4, 5, and 6 of section 15-36-15, shall conduct proceedings in accordance with chapter 28-32. The superintendent of public instruction, upon receipt of a formal complaint which includes a certified copy of a criminal judgment alleging grounds for suspension or revocation of any person's teacher's certificate as set forth in subsection 3 of section 15-36-15, shall conduct proceedings in accordance with chapter 28-32. Upon the completion of such proceedings, if the superintendent of public instruction shall find that grounds for revocation to annul, revoke, or suspension suspend for a period of time do exist, he the superintendent shall issue his an order in the manner provided in chapter 28-32 to annul, revoke, or suspend for a period of time the teacher's certificate of such person as provided in section 15-36-15.

SECTION 3. AMENDMENT. Section 15-38-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-38-19. Complaints against teachers. The commission shall accept and investigate complaints against any member of the teaching profession engaged in teaching in the public schools in regard to alleging a violation or violations of regulations promulgated in accordance with section 15-38-18 or otherwise pertaining to his personal or professional conduct or performance, or such

investigation or alleging grounds as set forth in subsections 1, 2, 4, 5, and 6 of section 15-36-15. Such investigations may be made upon its the commission's own motion. Following such investigation the commission may dismiss such complaint as unfounded, issue a written warning and reprimand, or, following an opportunity for such teacher to informally appear before the commission, file a formal complaint with the superintendent of public instruction requesting the suspension for a period of time or, revocation or annulment of the teachers' teacher's certificate of the teacher involved and stating the reasons therefor. The commission shall make the results of its investigation fully available to the superintendent of public instruction in such cases. Upon receipt of such formal complaint, the superintendent of public instruction shall proceed as provided in sections 15-36-16 and 15-36-17 and in accordance with section 15-36-15.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 220

SENATE BILL NO. 2208
 (Committee on Education)
 (At the request of the Teachers' Fund for Retirement)

TFFR CHANGES

AN ACT to amend and reenact sections 15-39.1-04, 15-39.1-06, subsection 1 of section 15-39.1-09, sections 15-39.1-22, and 15-39.1-27 of the North Dakota Century Code, relating to the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-39.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-04. Definitions. For purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Actuarial equivalent" means the annual amount determined by calculations based on mortality tables, purchasable with a given amount at a stated age.
2. "Base salary" as applied to the purchase of additional service credit ~~shall be~~ means the teacher's first annual salary earned in North Dakota immediately following the period for which service credit may be purchased.
- 2- 3. "Beneficiary" means the person designated in writing by the member or, in the absence of such designation, the member's surviving spouse, if any.
- 3- 4. "Board" ~~shall mean~~ means the board of trustees of the teachers' fund for retirement.
- 4- 5. "Contract" means a written agreement with any school board or other governing body of any school district of this state or a letter of appointment by a state institution, state agency, or other employer participating in the fund.
- 5- 6. "Fund" ~~shall mean~~ means the teachers' fund for retirement.

* NOTE: Section 15-39.1-04 was also amended by section 1 of House Bill No. 1494, chapter 221.

- 6- 7. "Interest", as applied to member assessments or as applied to the repurchase of credit for withdrawn years, is six percent compounded annually. "Interest", as applied to the purchase of extra service credit as defined in section 15-39.1-24, is eight percent compounded annually.
8. "Retirement annuity" means the payments made by the fund to a member after retirement, these payments beginning on the first or fifteenth day of the month following eligibility for a benefit.
- 7- 9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, and administrative services during a school year as reported on the member's federal income tax withholding statements plus the value of any fringe benefits selected at the member's option in lieu of monetary remuneration. "Salary" does not include fringe benefits such as payments for unused sick leave or vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, or medical insurance premiums paid by the employer in addition to salary.
- 8- 10. "State institution" ~~shall include~~ includes all state colleges and universities, the school of forestry, the school of science, the school for the blind, the school for the deaf, the Grafton state school, and the North Dakota industrial school.
- 9- 11. "Teacher" ~~includes~~:
- a. Includes:
- (1) All persons who are certified to teach in this state who are contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state, except that the superintendent and assistant superintendent of the Grafton state school may be brought within this definition at their option.
- b- (2) The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, state school supervisors and inspectors, every person engaged as president, dean, school librarian, or registrar of any state institution,

the secretary of the North Dakota education association, all assistant secretaries and professional staff of such association, the commissioner of higher education, and the professional staff of the North Dakota high school activities association.

e- (3) The executive director of the North Dakota school boards association, the executive secretary of the ~~teachers' fund for retirement~~, the executive director of the North Dakota council of school administrators, and the ~~secretary of the North Dakota school administrators association~~; provided, that such persons were certified staff of teachers centers, but only if the person was previously members a member of and have has credits in the fund.

b. The term "teacher" does Does not include persons connected with any professional school or college of any state institution as lecturers who are engaged in the practice of their respective professions and with whom teaching is merely an avocation.

SECTION 2. AMENDMENT. Section 15-39.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-06. Organization of board. The board may hold meetings as ~~may be necessary~~ for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year ~~shall~~ must be elected at the first meeting following July first of each year. ~~The state treasurer shall act ex officio as treasurer and the board shall be empowered to may employ a secretary an administrator, who need not be a member of the board and who shall perform such duties as the board may prescribe prescribes.~~

* SECTION 3. AMENDMENT. Subsection 1 of section 15-39.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~Every teacher, except under~~ Except as provided in subsection 2 of section 15-39.1-10.3, every teacher is a member of the fund and must be assessed upon the teacher's salary six and twenty-five hundredths percent per annum, which ~~shall~~ must be deducted monthly and paid to the ~~state treasurer fund~~ by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the ~~state treasurer fund~~ a sum equal to six and twenty-five hundredths percent per annum of the salary of each teacher employed by it. All such sums must be certified by the

* NOTE: Section 15-39.1-09 was also amended by section 1 of Senate Bill No. 2503, chapter 222.

disbursing official and paid quarterly to the state treasurer who shall set the same aside in the teachers' fund for retirement. The disbursing official shall certify the sums and pay the sums quarterly to the fund.

SECTION 4. AMENDMENT. Section 15-39.1-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-22. Annual report of board. On or before the first day of October of each year, the board shall annually report for the fiscal year ending the preceding June thirtieth day of June preceding. A. The board shall provide a copy of the report shall be submitted at the annual meeting of the members, which shall be at the time and place of the annual meeting of the North Dakota education association, and a copy of the report shall be annually submitted to each member and the governor.

SECTION 5. AMENDMENT. Section 15-39.1-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-27. "Year" defined - Computing for part-time teachers. Computation of years of service. In computing the terms of service of a member under the provisions of this chapter, for a member employed full time, a year shall is deemed to be one hundred seventy-five days of compensation. A time Employment less than one hundred seventy-five days of compensation shall is not deemed to be included as a full year but only as such the proportion of a year as the number of days of compensation hours employed in each year of service bears to one seven hundred seventy-five days of compensation hours.

At least four duty hours per day for twenty days per month shall constitute a month's teaching credit toward a retirement annuity for part-time teachers.

Approved March 26, 1987

Filed March 30, 1987

CHAPTER 221

HOUSE BILL NO. 1494
(C. Nelson)

TFFR INTEREST, DISABILITY, AND SERVICE CREDIT

AN ACT to amend and reenact subsection 6 of section 15-39.1-04 and sections 15-39.1-18 and 15-39.1-24 of the North Dakota Century Code, relating to a definition of interest, disability retirement, and purchase of service credit under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 6 of section 15-39.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Interest", as applied to member assessments or as applied to the repurchase of credit for withdrawn years, is six percent compounded annually. ~~"Interest", as applied to the purchase of extra service credit as defined in section 15-39.1-24, is eight percent compounded annually.~~

SECTION 2. AMENDMENT. Section 15-39.1-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-18. Disability retirements.

1. Any member may also retire and receive a disability annuity if, after a period aggregating ten years of at least one year of service as a member in this state, the member suffers from total disability as determined by the board.
2. The amount of the disability annuity shall equal the retirement benefit credits which the member had earned to the date of disablement is the greater of twenty percent of the last annual salary, or the amount computed by the retirement formula in section 15-39.1-10 without consideration of age. A member determined eligible for a disability annuity under this section may elect to receive

* NOTE: Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2208, chapter 220.

an annuity under any of the options allowed in section 15-39.1-16.

3. The disability annuity ~~shall continue~~ continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by examinations annually, or more often if necessary in the opinion of the board, the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, ~~he shall retain that annuitant is entitled to the retirement benefit credits which he the annuitant earned prior to the time of disablement, and the credits which he the annuitant earned after his return returning to active teaching shall~~ must be added to those earned prior to ~~his~~ disablement.
5. If the member elected a disability annuity under an option allowed under section 15-39.1-16, then subsequent retirement benefits must also be under that option.

SECTION 3. AMENDMENT. Section 15-39.1-24 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-24. ~~Teacher entitled to~~ Purchase of additional credit. Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher who comes from a school or educational institution supported by public taxation out of North Dakota and who becomes a teacher within the meaning of this chapter, by teaching one full school year in North Dakota following the out-of-state teaching, may elect to have no more than ten years of out-of-state teaching credited hereunder, except that any such years of out-of-state teaching shall not be eligible for credit in North Dakota if the years claimed also qualify for retirement benefits from a retirement system out of state.
2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with the board and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service.
3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving ~~his~~ the teacher's qualifications in the teaching profession ~~shall be is~~ entitled to have such periods while in attendance at ~~such~~ that college, university, or school credited, not to exceed three years

- of teaching service, under the provisions of this chapter; provided, that. To be eligible for purchasing credit under this subsection, the teacher has must have taught at least one full school year in North Dakota immediately preceding his entrance into the college, university, or school and that, or, immediately following such training he shall, the teacher must have taught not less than one full school year in a public school or state institution of this state.
4. Any teacher, after acquiring one year of service credit in the fund, may elect to purchase no more than ten years' service credit in accordance with this chapter, for years of service as a nonpublic schoolteacher, prior to July 1, 1971. For the purposes of this subsection, "nonpublic schoolteacher" means "lay faculty" as defined by subdivision k of subsection 1 of former section 15-39-01.
 5. A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for legislative sessions prior to July 1, 1985, must be purchased before January 1, 1986. Service credit for each later a legislative session must be purchased within one year after the adjournment of that legislative session.
 6. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.
 7. The Except as provided in subsection 5, the amount of additional service eligible to be purchased under this section shall must be credited to the teacher when the teacher has made the required payment within five years of initial eligibility or by July 1, 1986, whichever is later. The payment shall include teacher and employer assessments, plus interest, calculated upon the teacher's base salary, which shall also be the basis of the retirement benefits which the teacher shall be entitled to receive. In all cases, the purchase cost must be on an actuarial equivalent basis.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 222

SENATE BILL NO. 2503
(Senators Heinrich, Satrom, Holmberg)
(Representatives Christman, C. Nelson)

TFFR BENEFITS AND VESTING

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact subsection 1 of section 15-39.1-09, subsections 1 and 2 of section 15-39.1-10, and section 15-39.1-11 of the North Dakota Century Code, relating to assessment and contribution rates, payments of benefits, and vesting under the teachers' fund for retirement; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every teacher, except under subsection 2 of section 15-39.1-10.3, is a member of the fund and must be assessed upon the teacher's salary six and twenty-five hundredths percent per annum, which ~~shall~~ must be deducted monthly and paid to the ~~state treasurer fund~~ by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the ~~state treasurer a sum equal to~~ fund six and twenty-five hundredths percent per annum of the salary of each teacher employed by it. All such sums must be certified by the disbursing official and paid quarterly to the ~~state treasurer who shall set the same aside in the teachers' fund for retirement.~~

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 15-39.1-10 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:

* NOTE: Section 15-39.1-09 was also amended by section 3 of Senate Bill No. 2208, chapter 220.

- a. All members who have completed ~~ten~~ five years of teaching credit and who have attained the age of sixty-five years.
 - b. ~~All members who have attained the age of sixty-five years and who completed their final year of teaching in 1971.~~
 - e. All members who have a combined total of years of service credit, of which one year must be was completed after July 1, 1979, and years of age which equals ninety.
2. The amount of retirement benefits shall be calculated as follows: One is one and fifteen-hundredths twenty-two hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three ~~of the last ten~~ years of service under the fund.

SECTION 3. AMENDMENT. Section 15-39.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-11. Vesting of rights. When any member has paid assessments for a period of ~~ten~~ five years, he shall have for service in this state, that member has a vested right to a retirement annuity but he shall receive no ~~is not~~ entitled to payments ~~hereunder~~ under this chapter until he ~~the member~~ meets the requirements set forth in section 15-39.1-10 or 15-39.1-12.

SECTION 4. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Postretirement adjustments. An individual who, on June 30, 1987, is receiving benefits from the fund on an account paid under former chapter 15-39 is entitled to a monthly increase in that individual's annuity. The monthly increase is fifteen dollars plus one dollar and fifty cents for every year benefits have been drawn from the fund, but cannot exceed an increase of seventy-five dollars per month. An individual who, on June 30, 1987, is receiving benefits from the fund on an account paid under this chapter is entitled to a monthly increase of one dollar and fifty cents for every year benefits have been drawn from the fund.

SECTION 5. APPLICATION OF ACT. Section 4 of this Act applies to benefits payable after June 30, 1987.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 223

SENATE BILL NO. 2266
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

BENEFITS BETWEEN RETIREMENT SYSTEMS

AN ACT to amend and reenact sections 15-39.1-10.3, 39-03.1-14.1, and 54-52-17.2 of the North Dakota Century Code, relating to eligibility for accrual of benefits between retirement systems and purchase of prior service credit for members of certain public retirement systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-39.1-10.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-10.3. Effect of public employees retirement system service on vesting and Multiple plan membership - Eligibility for benefits - Dual membership Amount of benefits.

1. a. A For the purpose of determining vesting of rights under this chapter, a teacher's years of service credit for the purpose of vesting of rights under this chapter is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment, earned in the any number of the following:
 - (1) The public employees retirement system and the.
 - (2) The highway patrolmen's retirement system. A
- b. If a teacher who terminates eligible employment under the fund and who, if that teacher has not received a refund of member assessments, and if that teacher begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund of assessments if the teacher begins eligible employment under the public employees retirement system or the highway patrolmen's retirement system.

The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of a teacher under this subsection subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under the public employees retirement system and the highway patrolmen's retirement system a plan described in paragraph 1 or 2 of subdivision a.

- c. A teacher who has service credit in the fund and in the public employees retirement system or the highway patrolmen's retirement system, or both, must receive any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter, calculated by using the certified salaries of the retirement plan of last membership in the computation of final average monthly salary. The board shall calculate benefits for a teacher under this section by using only those years of service credit earned under this chapter.
2. If a teacher, who is a member of the fund, is also employed in any position where membership in the public employees retirement system is required, then for purposes of current employment the teacher is a member of the retirement system in which the teacher has the most years of service credit. If the teacher has an equal amount of service credit in both the fund and the public employees retirement system, the teacher is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the teacher the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the teacher is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that system. If the teacher is required to be a member of the public employees retirement system, the board, at the teacher's election, shall designate the teacher an inactive member of the fund without refund of the teacher's accumulated assessments with interest until the teacher ceases the employment which requires membership in both the fund and the public employees retirement system.
3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of

subsection 1, repurchase that service credit that was canceled.

SECTION 2. AMENDMENT. Section 39-03.1-14.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-14.1. Effect of other state retirement systems' service on eligibility Multiple plan membership - Eligibility for benefits and - Amount of benefits paid.

1. a. A For the purpose of determining eligibility for benefits under this chapter, a member's years of service for the purpose of determining eligibility for benefits under this chapter is the total of the years of service earned under this chapter and the years of service employment or years of service credit earned in any number of the following:

(1) The public employees retirement system and the years of service credit earned in the.

(2) The teachers' fund for retirement. A

b. If a member who terminates eligible employment under this chapter and who, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions if the member begins eligible employment in the teachers' fund for retirement or the public employees retirement system. The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of a member under this section subdivision if the member gains eligible employment under this chapter or if the employee member terminates eligible employment under teachers' fund for retirement or the public employees retirement system a plan described in paragraph 1 or 2 of subdivision a.

c. A member who has service credit in the system and in the teachers' fund for retirement or the public employees retirement system, or both, must receive any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter, calculated by using the certified salaries of the retirement plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

2. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

SECTION 3. AMENDMENT. Section 54-52-17.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-17.2. Effect of teachers' fund for retirement service on eligibility Multiple plan membership - Eligibility for benefits and - Amount of benefits paid---Dual membership.

1. a. An For the purpose of determining eligibility for benefits under this chapter, an employee's years of service employment for the purpose of determining eligibility for benefits under this chapter is the total of the years of service employment earned in the public employees retirement system and the years of service credit earned in the any number of the following:
- (1) The teachers' fund for retirement and the.
- (2) The highway patrolmen's retirement system. An
- b. If an employee who terminates eligible employment under the system and who, if that employee has not received a refund of the employee's account balance, and if the employee begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that employee may elect to remain an inactive member of the system without refund of the employee's account balance if the member begins eligible employment in the teachers' fund for retirement or the highway patrolmen's retirement system. The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of an employee under this subsection subdivision if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under teachers' fund for retirement and the highway patrolmen's retirement system a plan described in paragraph 1 or 2 of subdivision a.
- c. An employee who has service credit in the system and in the teachers' fund for retirement or the highway patrolmen's retirement system, or both, must receive any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this

chapter calculated by using the certified salaries of the retirement plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

2. If an employee, who is a participating member, is also employed in any position where membership in the teachers' fund for retirement is required, then for purposes of current employment the employee is a member of the retirement system in which the employee has the most years of service employment. If the employee has an equal amount of service in both the public employees retirement system and the teachers' fund for retirement, the employee is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the employee the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the employee is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that retirement system. If the employee is required to be a member of the teachers' fund for retirement, the board, at the employee's election, shall designate the employee an inactive member of the public employees retirement system until the employee ceases the employment which requires membership in both the public employees retirement system and the teachers' fund for retirement.
3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 224

HOUSE BILL NO. 1145
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

RETIREMENT AND MEDICAL RECORD CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 15-39.1, a new section to chapter 39-03.1, a new section to chapter 54-52, and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to confidentiality of certain retirement and medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality of records. Information pertaining to a teacher's retirement assessments and accumulated interest, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the teacher has given written consent to have the information disclosed.
2. A person legally representing the teacher, upon proper proof of representation, and unless the teacher specifically withholds consent.
3. A person authorized by a court order.

SECTION 2. A new section to chapter 39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality of records. Information pertaining to a contributor's accumulated deductions, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is not a public record. The information

and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the contributor has given written consent to have the information disclosed.
2. A person legally representing the contributor, upon proper proof of representation, and unless the contributor specifically withholds consent.
3. A person authorized by a court order.

SECTION 3. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality of records. Information pertaining to a member's retirement account balance, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.

SECTION 4. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality of records. Information pertaining to an eligible employee's group medical records for claims and amounts applied for under the supplemental life insurance coverage under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the eligible employee has given written consent to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds consent.
3. A person authorized by a court order.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 225

HOUSE BILL NO. 1037
(Legislative Council)
(Interim Education Finance Committee)

HIGH SCHOOL SUMMER PROGRAMS

AN ACT to amend and reenact section 15-40.1-07 of the North Dakota Century Code, relating to proportionate payments to school districts for high school summer programs and the superintendent of public instruction's authority to adopt rules for those payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07. High school per-pupil payments - Amount - Proportionate payments. There shall be paid each year from state funds to all school districts of the county operating high schools and to school districts contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, payments as follows:

1. For high schools having under seventy-five pupils in average daily membership, the amount of money resulting from multiplying the factor 1.70 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
2. For high schools having seventy-five or more, but less than one hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.40 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
3. For high schools having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.32 times the educational support per pupil as

provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

4. For high schools having a total high school enrollment of five hundred fifty or more pupils in average daily membership, the amount of money resulting from multiplying the factor 1.20 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

Every high school district shall receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. However, no payment shall be made for those pupils for whom federal agencies provide education. Such payments shall not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments shall be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district shall be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments shall be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs shall be eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation and, comprises at least as many clock hours as courses offered during the regular school term. However, no proportionate payments may be made to school districts for summer physical, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for such summer education programs.

Districts that did not maintain high schools during the year of 1964-1965 shall not be eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 226

HOUSE BILL NO. 1416
(Representatives D. Olsen, Meyer, Klundt)
(Senator Freborg)

FOUNDATION PAYMENTS IN CHANGED DISTRICTS

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to foundation aid payments to school districts with high schools that reorganize or annex.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

High school per-pupil payments - Dissolution or annexation of school districts.

1. If any school district receiving per-pupil payments calculated under section 15-40.1-07 annexes to or reorganizes with another school district, the school district resulting from the annexation or reorganization is entitled to receive the same per-pupil payments for each high school pupil as each separate school district received for each high school pupil prior to the annexation or reorganization, for a period of four years.
2. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the annexation or reorganization.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 227

HOUSE BILL NO. 1171
(Gates)

TEACHER QUALIFICATIONS

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to the qualifications of elementary and junior high school teachers; and to amend and reenact section 15-40.1-08 of the North Dakota Century Code, relating to the qualifications required of kindergarten and elementary teachers in order for a school to receive foundation aid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-08. Elementary per-pupil payments - Amount. There shall be paid from state funds to school districts of the county operating elementary schools and to school districts contracting to educate elementary pupils in a federal school, employing teachers holding valid certificates or permits in accordance with section 2 of this Act and chapter 15-36, payments based on the number of registered students at the beginning of each school year, adjusted as provided in section 15-40.1-09, as follows:

1. For one-room rural schools there shall be paid that amount of money resulting from multiplying the factor 1.30 times the educational support per pupil as provided in section 15-40.1-06 for each of the first sixteen pupils in grades one through eight in average daily membership, and for each additional pupil in grades one through eight in average daily membership there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment shall be made for more than twenty pupils in average daily membership.
2. For elementary schools having under one hundred pupils in average daily membership there shall be paid that amount of money resulting from multiplying the factor 1.0 times

the educational support per pupil as provided in section 15-40.1-06 for each of the first twenty pupils in grades one through six in average daily membership in each classroom or for each teacher and for each additional pupil in grades one through six in average daily membership in each classroom or for each teacher there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment shall be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher.

3. For elementary schools having one hundred or more pupils in average daily membership, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary pupils, there shall be paid that amount of money resulting from multiplying the factor .9 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
4. For elementary schools in school districts having an average daily membership of one thousand or more elementary pupils, there shall be paid that amount of money resulting from multiplying the factor .95 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
5. For each of the above classes of elementary schools, except for one-room rural schools, there shall be paid that amount of money resulting from multiplying the factor 1.0 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades seven and eight in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
6. For elementary schools having pupils under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, there shall be paid that amount of money resulting from multiplying the factor .49 times the educational support per pupil as provided in section 15-40.1-06 for each special education pupil under the compulsory age for school attendance in average daily membership in each classroom or for each teacher.

7. For elementary schools providing kindergartens which are established according to provisions of section 15-45-01, and for out-of-state kindergarten programs, approved by the state superintendent and utilized by North Dakota school districts bordering other states, there shall be paid that amount of money resulting from multiplying the factor .50 times the educational support per-pupil payment for that elementary school as determined under this section for each of the first twenty-five pupils in average daily membership in each classroom or for each teacher, except that no payment shall be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Every school district shall receive at least as much in total payments for elementary pupils as it would have received if it had the highest number of pupils in the next lower category. Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

SECTION 2. A new section to chapter 15-47 of the North Dakota Century Code is hereby created and enacted to read as follows:

Teacher qualification - Kindergarten through grade eight - Exceptions.

1. Except as provided in subsections 2 through 4, all teachers teaching kindergarten through grade eight must hold a teaching certificate and:
 - a. A minimum of a kindergarten endorsement to teach kindergarten; or
 - b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or
 - c. An endorsement in kindergarten or elementary education from the superintendent of public instruction attained within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses

prescribed by the superintendent of public instruction.

2. A teacher who holds a teaching certificate and a major or an endorsement in middle school education may teach grades five through eight.
3. A teacher who holds a teaching certificate and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.
4. A teacher who holds a teaching certificate and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, and computer education in kindergarten through grade eight.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 228

SENATE BILL NO. 2384
(Senators Mathern, Hilken)
(Representatives Goetz, A. Olson, Brokaw)

MULTIPLE SCHOOL DISTRICT AGREEMENT TAXING

AN ACT to create and enact a new section to chapter 15-40.1 and a new subdivision to subsection 1 of section 57-15-14.2 of the North Dakota Century Code, relating to taxing authority of school districts entering into cooperative agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interdistrict cooperative agreements - Taxing authority. The boards of two or more school districts may enter into interdistrict cooperative agreements to share levied taxes in all or a portion of their respective districts. The rate of taxes to be levied on any property included in the joint taxing area or district is the rate of tax provided in the cooperative agreement not exceeding levy limitations that apply to the district in which property subject to the tax is located. At the time of fixing the levies, the county auditors of each county in which all or a portion of the cooperating district is located shall fix and levy taxes on that portion of the property described in the cooperative agreement which is located in their county at the rate provided in the cooperative agreement.

SECTION 2. A new subdivision to subsection 1 of section 57-15-14.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The district's share of contribution to finance an interdistrict cooperative agreement authorized by section 1 of this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 229

HOUSE BILL NO. 1604
(Representatives O. Hanson, D. Olsen, Wentz)
(Senator J. Meyer)

SPECIAL EDUCATION STUDENT CHARGES

AN ACT to amend and reenact section 15-40.2-03 of the North Dakota Century Code, relating to school district tuition payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-03. Tuition payments. School districts educating pupils in other school districts shall pay the full cost of education. Such costs shall be determined on the basis of average daily membership and shall include annual expenditures from the general fund and annual educational expenditures from all special funds; provided, that only those expenditures permitted in determining the educational cost per pupil in section 15-40.1-06 shall be included in determining average current operating expenses. To such average current operating expense in the county for kindergarten, elementary, or high school students, as the case may be, except special education students where a fair rental charge for each student for capital outlay must be determined by the department of public instruction, shall be added ~~double~~ the statewide total of all school districts' annual expenditures from sinking and interest funds, plus ~~double~~ the statewide total of all school districts' annual tax receipts to the building funds, including any amounts expended from school districts' general funds for capital outlay, divided by the average daily membership of the state. From this amount, the following shall be deducted for each individual pupil:

1. Such payments as are received for him from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from a twenty-mill school district levy; and

2. A credit applied for any school taxes paid to the admitting district by the parent or guardian of the admitted pupil.

The amount remaining shall be the tuition charge for the individual pupil, and shall be paid under this chapter.

The amount calculated for kindergarten students shall be one-half of the amount calculated for elementary students.

If the district of residence and the parent or guardian are both paying tuition, the credit allowed under this section for taxes paid to the admitting district by the parent or guardian shall be credited to the district of residence and the parent or guardian in proportion to the amount of tuition paid by each.

Nothing contained in this chapter shall affect the right of a school district to charge and collect such tuition as may be fixed by agreement from pupils who are not residents of this state, in accordance with section 15-40.2-10.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 230

HOUSE BILL NO. 1161
(Committee on Education)
(At the request of the Superintendent of Public Instruction)

TUITION COMMITTEE COMPOSITION

AN ACT to amend and reenact section 15-40.2-05 of the North Dakota Century Code, relating to the composition of the three-member tuition committee; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-05. Application of parent or guardian for payment of tuition by district. The parent or guardian of any pupil who is a resident of a district may apply in writing to the school board of the school district of residence of the pupil for approval of the payment of tuition charges to another school district for attendance of the pupil in such other school district. The school board shall, within sixty days of its receipt of such application, meet with the parent or guardian of the pupil concerned and render a decision in regard to payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application shall be deemed approved. If the school board of the district of residence shall approve such application, it shall pay the tuition charges. In the event such application shall be disapproved, the parent or guardian of the pupil may file an appeal with the county superintendent of schools, and a three-member committee consisting of the county judge a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned, hold a hearing, giving advance notice to the parties directly involved, and render a decision in regard to payment of the tuition charges. The hearing must be conducted in a manner that allows the arguments and responses of all parties to be presented. In making such its decision, the committee shall determine whether the pupil is a high school pupil, which, for purposes of this

section, shall be defined to mean grades nine through twelve, or whether the pupil is an elementary school pupil, which, for purposes of this section, shall be defined to mean grades one through eight, or whether the pupil is a kindergarten pupil, which, for purposes of this section, shall be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High School. If the pupil is a high school pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the particular pupil, or in cases of extreme family or pupil hardship, the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the pupil's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board shall be final.
2. Elementary. If the pupil is an elementary pupil and the committee finds that the attendance of such pupil is necessitated by shorter distances or in cases of extreme family or pupil hardship, the committee may approve or disapprove the application. Upon approval, the committee shall approve the payment of tuition by the district of residence of the pupil, obligating such district of residence to pay the same. The committee's approval for the payment of tuition shall be limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee shall be final.
3. Kindergarten. If the pupil is a kindergarten pupil, the school board of the district of the pupil's residence may pay tuition to the receiving district. The committee shall not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the parent or guardian of the pupil may pay the tuition to the admitting district under the provisions of section 15-40.2-02.

If any portion of the school district lies in more than one county, the joint committee shall consist of the county judge a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county

superintendent of schools from each county lying within the district, and the concurrence of a majority of all members the quorum of the joint committee must render a decision regarding payment of the tuition. In the event that the district of residence of the pupil does not comply with the decision requiring that the tuition charges be paid, the admitting district shall notify the county superintendent of schools of the county of the pupil's residence and the state superintendent of public instruction of such fact, and upon verification by the county superintendent of schools that such tuition payments are in fact due the admitting district and are unpaid, all payments from the state for foundation aid to the district of residence of the pupil, shall be withheld until the tuition due has been fully paid.

This section shall not be construed to require the district of residence to provide pupil transportation or payments in lieu thereof, for pupils for whom the payment of tuition has been approved.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 231

HOUSE BILL NO. 1424
(Representatives Stofferahn, L. Hanson, V. Olson)
(Senator Kelsh)

HANDICAPPED STUDENT TUITION

AN ACT to create and enact section 15-40.2-08.1 of the North Dakota Century Code, relating to the payment of tuition for handicapped children placed outside their school districts of residence for purposes other than education; and to amend and reenact section 15-40.2-08 of the North Dakota Century Code, relating to tuition payments for foster care students placed outside their school districts of residence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-08. Residency determination and the payment of tuition in cases of foster care child ~~placement~~ placements for purposes other than education.

1. For purposes of applying this chapter, the school district in which a child resides shall be construed to be the district of residence of such child:
 - 1- a. At the time any court order or order of a juvenile supervisor shall have been issued requiring such child to stay for any prescribed period at a foster home, or home maintained by any nonprofit corporation, or any referrals made from a state-operated institution;
 - 2- b. At the time of any placement for any prescribed period of time by a county or state social service agency with the consent of the parent or guardian at a foster home or home maintained by any nonprofit corporation; or
 - 3- c. At the time of any voluntary admission to a state-licensed child care home or agency.

2. Such The district of residence shall be liable for tuition upon claim of the admitting district; provided, that both the district of residence and the admitting district be notified of the placement, admission, or court order at the time the same is ordered. Notification shall be made by the placement agency.
3. Where the parent or parents of the child were residents of the district at the time of placement under ~~subsections 1 through 3~~ subdivisions a through c of subsection 1, but such parent or both parents have subsequently moved elsewhere, so that there is no parent residing in said ~~district of residence~~ to another school district within North Dakota, then the tuition and excess cost due the admitting district shall be paid by the district of residence of the parent or parents. If the child does not have a parent or parents residing in North Dakota, or if parental rights have been terminated, then the tuition due the admitting district must be paid by the state from funds appropriated by the legislative assembly for the foundation aid program. If the child is handicapped or otherwise requires special education or related services approved by the director of special education, the district of residence shall be liable to pay the admitting district as part of the cost of educating such student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment may not exceed the actual per-pupil cost incurred by the admitting district. The remainder of the actual cost of educating the handicapped student not covered by other payments or credits shall be paid from funds provided to the department of public instruction by the legislative assembly for special education. If the handicapped child does not have a parent or legal guardian residing in North Dakota, the state shall pay the cost of tuition and the excess educational costs.
4. In the event of a voluntary admission to any state-licensed child care home or agency, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. The three-member committee referred to in section 15-40.2-05, shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges.
5. Those provisions of section 15-40.2-05 relating to multicounty districts, notification of unpaid tuition, and withholding of state payments apply to this section.

SECTION 2. Section 15-40.2-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-40.2-08.1. Payment of tuition in cases of handicapped children placed for purposes other than education.

1. The payment of tuition in cases of handicapped children placed outside their school districts of residence for purposes other than education must be made by the school district of residence and by the state in the proportions set forth in subsection 2. For purposes of applying this section, the school district in which a child resides shall be construed to be the district of residence of such child:
 - a. When the placement is made for any prescribed period of time by a county or state social service agency or a regional human service center at a state-licensed child care home or agency;
 - b. When the placement is made from a state-operated institution; or
 - c. When the placement is made pursuant to an order of any state court, tribal court, or a juvenile supervisor which requires a child to stay for any prescribed period of time at a state-licensed child care home or agency.
2. For the biennium beginning July 1, 1987, and ending June 30, 1989, the school district of residence is liable to pay the admitting district as part of the cost of educating the student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment may not exceed the actual per-pupil cost incurred by the admitting district. The remainder of the actual cost of educating the student not covered by other payments or credits shall be paid from funds provided to the department of public instruction by the legislative assembly for special education.
3. For succeeding bienniums the school district of residence is liable to pay the admitting district as part of the cost of educating the student an amount for the school year equal to the state average per-pupil elementary or high school cost, depending on whether the enrollment is in a grade or high school department, provided that the payment may not exceed the actual per-pupil cost incurred by the admitting district. The remainder of the actual cost of educating the handicapped student not covered by other payments or credits must be made as follows:

- a. For the biennium beginning July 1, 1989, and ending June 30, 1991, the school district of residence is liable for sixty percent of the cost and the state is liable for forty percent of the cost.
 - b. For the biennium beginning July 1, 1991, and ending June 30, 1993, the school district of residence is liable for forty percent of the cost and the state is liable for sixty percent of the cost.
 - c. For the biennium beginning July 1, 1993, and ending June 30, 1995, the school district of residence is liable for twenty percent of the cost and the state is liable for eighty percent of the cost.
 - d. After June 30, 1995, the state is liable for one hundred percent of the cost.
4. The state and the school district of residence are liable for tuition and the actual cost of educating the student upon claim of the admitting school district; provided, that the state, the district of residence, and the admitting school district are notified of the placement by the placement agency, institution, or court at the time the same is ordered. Notification shall be made by the placement agency.
 5. If the handicapped student does not have a parent residing in North Dakota, or if parental rights have been terminated, the state shall pay the actual cost of educating the handicapped student from funds appropriated by the legislative assembly for the foundation aid program. If the handicapped student has reached the age of majority and continues to receive special education and related services from a public school district, the district of residence of the student remains the same as the student's parent or parents until the special education services are concluded.
 6. In the event of a voluntary admission to any state-licensed child care home or agency, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. The three-member committee referred to in section 15-40.2-05, shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges. Those provisions of section 15-40.2-05 relating to multicounty districts, notification of unpaid tuition, and withholding of state payments apply to this section.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 232

HOUSE BILL NO. 1299
(Representatives Klundt, Schindler)
(Senator Heinrich)

SCHOOL DISTRICT MILL LEVIES

AN ACT to amend and reenact sections 15-45-01, 32-12.1-08, 40-55-08, 40-55-09, 52-09-08, 57-15-14, and 57-15-14.2 of the North Dakota Century Code, relating to kindergartens, the insurance reserve fund, recreation systems, old-age survivors' fund, tax levy limitations, and consolidation of school district mill levies; and to repeal section 57-15-14.3 of the North Dakota Century Code, relating to school district general fund mill levies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-45-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-45-01. Establishing kindergartens - Election on mill levy. The school board of any school district may, upon its own motion, establish free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term. A school board which establishes free kindergartens may levy a tax pursuant to subdivision ~~f~~ p of subsection 1 of section ~~57-15-14.3~~ 57-15-14.2. On a petition signed by qualified electors of the school district comprising at least five percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, but in no case less than twenty-five qualified electors, the school board must submit the question of establishing a kindergarten program at the next annual or special school election. ~~If the question of establishing a kindergarten program is placed on the ballot, that question must include a statement of any increase in the district's mill levy needed to finance the program.~~ The question must be approved by the qualified electors of the district by the respective margins of electorate approval as provided for in section 57-15-14, ~~and approval of the question constitutes elector approval of the additional mill levy necessary to finance the program.~~

SECTION 2. AMENDMENT. Section 32-12.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-08. Political subdivision insurance reserve fund - Tax levy.

1. A political subdivision, other than a school district, may establish and maintain an insurance reserve fund for insurance purposes, and all political subdivisions including school districts may include in the annual tax levy of the political subdivision such amounts as are determined by the governing body to be necessary for the purposes and uses of the insurance reserve fund. Except in the case of a school district, the tax levy authorized by this section shall not exceed the limitation in section 57-15-28.1. If a political subdivision has no annual tax levy, the political subdivision may appropriate from any unexpended balance in its general fund such amounts as the governing body of the political subdivision shall deem necessary for the purposes and uses of the insurance reserve fund.
2. Except in the case of a school district, the fund established pursuant to this section shall be kept separate and apart from all other funds and shall be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims. Payments by a school district for the same purposes shall be made out of the district's ~~special~~ general fund as established in section 57-15-14.2.

SECTION 3. AMENDMENT. Section 40-55-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-55-08. Election to determine desirability of establishing recreation system - How called. The governing body of any municipality, school district, or park district to which this chapter is applicable, may and upon receipt of a petition signed by at least ten qualified electors but not less than five percent of those qualified electors who voted at the last general election of the municipality, school district, or park district, shall submit to the qualified electors the question of the establishment, maintenance, and conduct of a public recreation system, and except in the case of a school district, the levying of an annual tax for the conduct and maintenance thereof of not more than two and five-tenths mills on each dollar of taxable valuation of all taxable property within the corporate limits or boundaries of such municipality or park district, to be voted upon at the next general election or special municipal election; provided, however, that such questions shall not be voted upon at the next general election unless such action of the

governing body shall be taken, or such petition to submit such question shall be filed thirty days prior to the date of such election. A school district may levy a tax for the establishment, maintenance, and conduct of a public recreation system pursuant to subdivision q of subsection 4 1 of section 57-15-14-3 57-15-14.2.

SECTION 4. AMENDMENT. Section 40-55-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-55-09. Favorable vote at election - Procedure. Except in the case of a school district, upon adoption of the public recreation system proposition at an election by a majority of the votes cast upon the proposition, the governing body of the municipality or park district, by resolution or ordinance, shall provide for the establishment, maintenance, and conduct of a public recreation system, and thereafter levy and collect annually a tax of not more than two and five-tenths mills, or not more than eight and five-tenths mills if the same is authorized as herein provided, on each dollar of the taxable valuation of all taxable property within the corporate limits or boundaries of the municipality or park district. This tax is to be in addition to the maximum of taxes permitted to be levied in such municipality or park district. The mill levy herein authorized may be raised to not more than eight and five-tenths mills when the increase is approved by the citizens of the municipality or park district after submission of the question in the same manner as provided in section 40-55-08 for the establishment of the public recreation system. The governing body of the municipality or park district shall continue to levy the tax annually for public recreation purposes until the qualified voters, at a regular or special election, by a majority vote on the proposition, decide to discontinue the levy. The governing body of the municipality, school district, or park district, in its discretion, may appropriate additional funds for the operation of the public recreation system if in the opinion of the governing body additional funds are needed for the efficient operation thereof. This chapter does not limit the power of any municipality, school district, or park district to appropriate on its own initiative general municipal, school district, or park district tax funds for the operation of a public recreation system, a community center, or character building facility. A school district may levy a tax for the conduct and maintenance of a public recreation system pursuant to subdivision q of subsection 4 1 of section 57-15-14-3 57-15-14.2.

*** SECTION 5. AMENDMENT.** Section 52-09-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-09-08. Default in taxes - Interest - Action to collect - Levy of tax by political subdivisions. Taxes unpaid on the date on which they are due and payable as prescribed by the bureau, shall bear interest at the rate of one-half of one per centum per month from and after such date until payment plus accrued interest is received by the bureau; provided, that the bureau may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue with

*** NOTE:** Section 52-09-08 was also amended by section 1 of House Bill No. 1426, chapter 604.

respect to taxes required. In no case shall the amount of interest imposed hereby be less than five dollars. Interest collected pursuant to this section shall be paid into the old-age and survivors' fund.

1. If within thirty days after due notice, the employer defaults in payment of taxes or interest thereon, the amount due shall be collected by civil action in the name of the bureau and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect taxes or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions.
2. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision.
3. The political subdivision, except a school district, a multidistrict special education board, or a center board of a multidistrict vocational education center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section shall be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter shall be made out of the school district's ~~special~~ general fund established pursuant to section 57-15-14.2.

SECTION 6. AMENDMENT. Section 57-15-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-14. Tax levy limitations in school districts. The aggregate amount levied each year for the purposes listed in section ~~57-15-14.3~~ 57-15-14.2 by any school district, except the Fargo school district, shall not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of ~~seventy~~ seventy one hundred eighty mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
 - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.

- b. There shall be no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. In any school district in which the total assessed valuation of property has increased twenty percent or more over the prior year and in which as a result of that increase the school district is entitled to less in state foundation aid payments provided in sections 15-40.1-06 through 15-40.1-08 because of the deduction required in subsection 3 of section 15-40.1-06, there may be levied any specific number of mills more in dollars than was levied in the prior year up to a general fund levy of seventy one hundred eighty mills on the dollar of the taxable valuation of the school district. The additional levy authorized by this subsection may be levied for not more than two years because of any twenty percent or greater annual increase in assessed valuation. The total amount of revenue generated in excess of the eighteen percent increase which is otherwise permitted by this section may not exceed the amount of state aid payments lost as a result of applying the deduction provided in subsection 3 of section 15-40.1-06 to the increased assessed valuation of the school district in a one-year period.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district shall be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census shall be required. However, not fewer than twenty-five signatures shall be required unless the district has fewer than twenty-five qualified electors, in which case the petition shall be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district shall be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing

either such authority shall not affect the tax levy in the calendar year in which the election is held. The election shall be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

SECTION 7. AMENDMENT. Section 57-15-14.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-14.2. Mill levies requiring board action - Proceeds to special general fund account.

1. A school board of any school district may levy an amount sufficient to cover general expenses including the costs of the following:
 - a. Board and lodging for high school students as provided in section 15-34.2-06.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.
 - c. Tuition for students in grades seven through twelve as provided in section 15-40.2-12.
 - d. Special education program as provided in section 15-59-08.
 - e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in section 32-12.1-08.
 - f. A final judgment obtained against a school district.
 - g. The district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund as provided by chapter 52-09 and to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund for contracted employees of a multidistrict special education board.
 - h. The rental or leasing of buildings, property, or classroom space. Minimum state standards for health and safety applicable to school building construction shall apply to any rented or leased buildings, property, or classroom space.
 - i. Unemployment compensation benefits.
 - j. The removal of asbestos substances from school buildings and any repair, replacement, or remodeling that results from such removal.

- k. Participating in cooperative vocational education programs approved by the state board.
 - l. Maintaining a vocational education program approved by the state board and established only for that school district.
 - m. Paying the cost of purchasing, contracting, operating, and maintaining schoolbuses.
 - n. Establishing and maintaining school library services.
 - o. Equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment.
 - p. Establishing free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term.
 - q. Establishing, maintaining, and conducting a public recreation system.
2. A school board may levy no more than a total of ninety mills for the purposes listed in subsection 1 except that this limitation does not apply to mill levies pursuant to subdivisions a, c, f, and j of subsection 1. If a school district maintained a levy to finance either its participation in a cooperative vocational education program or its sponsorship of single-district vocational education programs prior to July 1, 1983, and the district discontinues its participation in or sponsorship of those vocational education programs, that district must reduce the proposed aggregated expenditure amount for which its general fund levy is used by the dollar amount raised by its prior levy for the funding of those programs.
3. All proceeds of any levy established pursuant to this section shall be placed in the school district's special general fund account and may be expended to achieve the purposes for which the taxes authorized by this section are levied.

SECTION 8. REPEAL. Section 57-15-14.3 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 233

HOUSE BILL NO. 1525
(C. Nelson, Rydell, L. Hanson, O'Connell, Goetz)

KINDERGARTEN REQUIREMENTS

AN ACT to amend and reenact sections 15-45-02 and 15-45-03 of the North Dakota Century Code, relating to requirements for public kindergartens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-45-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-45-02. Kindergarten curriculum - Rules - Length of kindergarten term Approval requirements. The school board shall establish a curriculum for kindergarten and such other rules governing the kindergartens as it may deem best, and shall govern them, so far as practicable, in the manner and by the officers provided by law for the government of other public schools. All public kindergartens must comply with the following requirements:

1. All kindergarten teachers must hold valid certificates issued under rules adopted by the superintendent of public instruction as provided in chapter 15-36.
2. The governing body of each kindergarten shall submit to the superintendent of public instruction and must follow a curriculum providing developmentally appropriate skills in the areas identified in section 15-38-07 and promulgated under subsection 4 of section 15-29-08.
3. All kindergartens shall provide the equivalent of a minimum of thirty full days of instruction. The school board shall determine whether kindergarten shall be provided on a half-day or a full-day basis.
4. All kindergartens shall comply with all municipal and state health, fire, and safety laws.
5. No kindergarten may enroll a child who is not five years old by midnight August thirty-first of the year of

enrollment, except a child who by reason of special talents or abilities as determined by a series of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the persons operating the kindergarten. A child who has been enrolled in another approved kindergarten program may be enrolled at a younger age. However, no child may start kindergarten in any year unless that child is five years old by the following January first.

Any person operating a private or parochial kindergarten may seek approval from the superintendent of public instruction and those programs must meet the requirements of this section in order to be approved. Only programs receiving approval from the superintendent of public instruction may be called approved kindergartens.

SECTION 2. AMENDMENT. Section 15-45-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-45-03. Kindergarten teachers - Qualifications Accreditation standards. Kindergarten teachers shall hold valid certificates issued by the The superintendent of public instruction entitling them to teach kindergarten in the elementary schools of may adopt standards for the accreditation of all kindergartens operated in this state. All kindergartens that comply with these standards are accredited kindergartens.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 234

HOUSE BILL NO. 1593
(Hamerlik)

MEDICAL CENTER

AN ACT to amend and reenact sections 15-52-02, 15-52-03, 15-52-04, 15-52-07, 15-52-16, 15-52-20, 15-52-29, and subsection 1 of section 15-52-30 of the North Dakota Century Code, relating to control and operation of the state medical center, members and terms of the medical center advisory council, duties of the council, use of center facilities by political subdivisions, qualifications of loan applicants, loan conditions, training and scholarships for psychiatric personnel, and authorized contracts or agreements; and to repeal section 15-52-06 of the North Dakota Century Code, relating to fees and charges of the medical center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-52-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-02. Control and operation. The control and operation of ~~such~~ the North Dakota state medical center shall be the duty and responsibility of the administrative authorities of the university of North Dakota and its medical school under the ~~supervision~~ policies of the state board of higher education or its successor in authority.

SECTION 2. AMENDMENT. Section 15-52-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-03. Medical center advisory council - Members, terms, meetings. In order to assure the proper coordination and integration of the North Dakota state medical center with all other health and welfare activities of the state, a permanent medical center advisory council is hereby established to advise, consult, and make recommendations to the university administration, and to the several agencies represented on the council concerning the program of the North Dakota state medical center, the adaptation thereof to the needs of the state and to the requirements and facilities of the several

agencies involved, and the use of the North Dakota state medical center and its facilities by the various institutions and agencies of the state and its political subdivisions. The council shall consist of ~~eleven~~ ~~fourteen~~ members: two to be named by the governor; one to be named by and from the membership of the state board of higher education, or any state entity that succeeds the board, the executive director of each of the following: the department of human services, or a designee of the director; the state board of higher education, or such boards or departments as shall succeed them or any of them; the state health officer of the North Dakota state department of health; one to be named by and from the membership of the North Dakota state medical association; and one to be named by and from the membership of the North Dakota hospital association; and the veterans administration hospital in Fargo; the house of representatives, appointed by the speaker; and the senate, appointed by the president of the senate; with the remaining four members shall be the persons serving as chairmen of the area health education center governing bodies in the cities of Grand Forks to be selected from the four campus areas of the medical school with headquarters in Bismarck, Fargo, Bismarck Grand Forks, and Minot. One member from each quadrant will be selected by the board to serve a three-year term with a two-term limit. The initial appointments must be staggered.

The representatives named by the state agencies and boards above referred to shall be selected to serve as members of the medical center advisory council for periods of at least one year, but in no instance may they serve longer than their term of office on the public agency. The representatives from the North Dakota state medical association and the North Dakota hospital association shall serve a term of three years or until their successors are named and qualified. The two members appointed by the governor shall serve for three-year terms as representatives of the public at large. The directors of the area health education centers shall serve during the term of their directorships.

The council shall name its own chairman and the dean of the university of North Dakota medical school shall serve as executive secretary thereof. The council shall meet not less than twice each year, and, from time to time, on its own motion or upon request of the university administration, to consider plans and programs of action for the North Dakota state medical center, and make its recommendations thereon to the several agencies of the state and its political subdivisions involved and to the legislative assembly.

SECTION 3. AMENDMENT. Section 15-52-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-04. Duties of council. The medical center advisory council shall study, consider, and formulate plans for facilitating and implementing, through the instrumentality of such the North Dakota state medical center, a unified program for the improvement and maintenance of the health of the people of North Dakota in all of its phases, and such study shall include specifically ways and means

of bringing about the complete training of adequate numbers of qualified physicians and surgeons for the people of North Dakota, both in the general practice of medicine and surgery and the field of public health, the training of nurses and public health nurses, of allied health professionals, of sanitary engineers, of public health administrators, and all other personnel concerned with the improvement and preservation of the health of the people of North Dakota. The council shall also consider and formulate plans for the establishment and maintenance of facilities for the care, treatment, and hospitalization of indigent and such other patients as should be admitted to treatment for the fullest use of the facilities of the North Dakota state medical center, and the establishment of plans for the fullest possible use of the facilities by private physicians and surgeons and by public health and welfare administrators and agencies for the improvement of their services to the people of the state. Such plans as are capable of being put into effect without further legislative action shall be recommended for immediate action.

SECTION 4. AMENDMENT. Section 15-52-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-07. Political subdivisions shall use facilities of center. All agencies of the state, counties, and municipalities in any way concerned with health, medical care, or public welfare, shall make the fullest possible use of the facilities and services of the North Dakota state medical center and shall pay therefor the established fees and charges, and may contribute to the North Dakota state medical center specific fees or monthly payments for specific facilities and services furnished, for the care of the indigent, those suffering from communicable diseases, and those eligible for physical and vocational rehabilitation.

SECTION 5. AMENDMENT. Section 15-52-16 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-16. Qualifications of loan applicants. An applicant is deemed qualified only if the applicant:

1. Has been a resident of the state of North Dakota at least ~~two years~~ one year prior to the date of entering medical school or dental school;
2. Has successfully completed the first year of the curriculum in medicine at the university of North Dakota or has successfully completed the first year of the curriculum in dentistry in a qualified and reputable dental school;
3. Can present to the university satisfactory proof that the applicant has been accepted as a student in the second, third, or fourth year of a qualified and reputable

four-year school of medicine or dentistry, or will be so accepted upon payment of tuition, and

4. is of good moral character.

SECTION 6. AMENDMENT. Section 15-52-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-20. Loan conditions. Loans granted by the university under section 15-52-10 and sections 15-52-15 through 15-52-28 are to be upon the condition that the full amount thereof shall be repaid in cash with ~~nine~~ six percent interest annually from the date of each payment pursuant to a loan agreement, the repayment to be in yearly installments on a schedule set by the university and the first installment becoming due and payable one year from the date on which the applicant ~~completes the first year of residency if a medical student begins practice, but under no circumstances to exceed five years from the date of graduation or one year from the date of graduation from a dental school if a dental student.~~ if prior approval is obtained from the university, such first installment shall not become due and payable until one year from the date on which the applicant completes additional residency or other advanced study or military service of not more than three years' duration.

SECTION 7. AMENDMENT. Section 15-52-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-52-29. Training of psychiatric personnel - Scholarships. The North Dakota state medical center, under the direction policies of the state board of higher education, is hereby authorized and directed to provide or encourage means for providing for the training of such psychiatrists and other psychiatric personnel as may be necessary to properly staff state institutions and agencies providing services in the field of mental health. The board of higher education North Dakota medical center shall be authorized to execute contracts with any suitable public or private agency providing such training services and facilities and to pay for such services from funds of the medical center as provided in section 15-52-09.

The board is specifically authorized and directed, acting through the medical center, to provide scholarships ~~or stipends~~ in such amounts as may be necessary for the use of qualified physicians during periods in which such physicians are in training in the field of psychiatry. Such scholarships shall be conditioned upon service upon the staffs of state institutions and agencies by such psychiatrists after the completion of their formal training for such term as the board may prescribe. ~~Failure to serve for the prescribed period of time or to satisfactorily complete the course of training required by the board shall cause the amount of the scholarship or stipend paid to such persons to become due and repayable to the medical center with interest as prescribed by the board.~~

SECTION 8. AMENDMENT. Subsection 1 of section 15-52-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state board of higher education upon the recommendation of the medical center advisory council is hereby authorized to enter into contracts or agreements, both interstate and intrastate, to provide medical education opportunities. These contracts and agreements shall be made within the limits of available legislative appropriation and may be for such periods of time as the board of higher education deems necessary.

SECTION 9. REPEAL. Section 15-52-06 of the North Dakota Century Code is hereby repealed.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 235

HOUSE BILL NO. 1143 (Committee on Education)

(At the request of the State Board of Higher Education)

HIGHER EDUCATION BONDS

AN ACT to amend and reenact sections 15-55-02, 15-55-05, and 15-55-06 of the North Dakota Century Code, relating to conditions for issuance of state board of higher education bonds, deposits of proceeds of bonds, and issuance of warrants by the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-55-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-02. Board may borrow money and issue bonds - Conditions - Bonds tax free. For the purpose of paying all or part of, but not to exceed, the cost of construction, equipment, and furnishing of any such buildings or any addition to existing buildings, or other campus improvements, or in order to refund any outstanding bonds or interim financing issued for such purpose, the state board of higher education may borrow money on the credit of the income and revenue to be derived from the operation of the said building or buildings or other campus improvements, and, in anticipation of such collections of such income and revenues, may issue negotiable bonds in such an amount as, in the opinion of the board, may be necessary for such purposes, all within the limits of the authority granted by the legislative assembly in each instance, and may provide for the payment of such bonds and the rights of the holders thereof as provided in this chapter. The bonds shall be payable serially, and may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding fifty years from their date, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate or rates of interest and may be subject to such other terms or conditions as may be provided by resolution or resolutions to be adopted by the board. The bonds may be sold in such manner and at such price or prices **not less than ninety-five percent of par**

plus accrued interest to date of delivery, as may be considered by the board to be advisable. The average net interest cost to maturity for any bond issues sold at private sale shall not exceed twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Any grants agreed to be made by the United States of America or any agency or instrumentality thereof to reduce the interest cost of bonds, whether or not pledged to the payment of the bonds or interest thereon as part of the income and revenue to be derived from the operation of the buildings or improvements pledged to the payment of the issue, shall be considered as a reduction in the interest costs of the bonds with respect to which the grant is made, for purposes of the rate limitations on interest costs provided herein. The bonds shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the state of North Dakota, or by any county, municipality, or political subdivision therein. The board, in its discretion, may authorize one issue of bonds hereunder for the construction, furnishing, and equipment of more than one building or other campus improvement and may make the bonds payable from the combined revenues of all buildings or other campus improvements acquired in whole or in part with the proceeds thereof, and where bonds are so issued the words "the building", as herein used, refers to all the buildings or other campus improvements so acquired.

SECTION 2. AMENDMENT. Section 15-55-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-05. Deposit and use of proceeds of bonds - Authorizing issuing of warrants - Contracts. The proceeds from the sale of the bonds herein authorized shall be deposited to the credit of the board and kept in a separate fund in the state treasury, in the Bank of North Dakota or in a bank which is a duly designated depository for state funds and is a member of the federal deposit insurance corporation. Provided, that when such funds are deposited in a bank other than the Bank of North Dakota or a bank which is not a duly designated depository for state funds, such bank shall be required to pledge as security for such deposit, securities in an amount equal to the sum by which such deposit exceeds the amount of federal deposit insurance corporation insurance. Securities which shall be eligible for such pledge shall be notes or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, or bonds issued by any state of the United States. In lieu of the deposit of such securities, a surety bond may be accepted from the bank designated as a depository in a sum equal to the amount of funds such bank may receive in excess of the amount guaranteed by the federal deposit insurance corporation. Such proceeds shall be used solely for the purpose for which the bonds are authorized except that the board may invest such funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, or obligations of the state of North Dakota or of any municipality as defined in section

21-03-01 prior to or during building or other campus improvement construction except to the extent such investment is prohibited or restricted by any covenant made with or for the benefit of bondholders. The board is authorized to make all contracts and to cause the execution of all instruments which in its discretion may be deemed necessary or advisable to provide for the construction, furnishing, and equipment of the building or other campus improvement or for the sale of the bonds or for interim financing deemed necessary or advisable pending the sale of the bonds and pledging the proceeds of the bonds. The state auditor is hereby authorized and directed to issue warrants upon the state treasury against such funds, if any, deposited by the board in the state treasury for such amounts as he may from time to time find to be due upon audited itemized estimates and claims which bear the approval of the officials designated by the board for such purpose.

SECTION 3. AMENDMENT. Section 15-55-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-06. Designations of agent and depositories - Disposition and use of revenues - Funds created. All income and revenues derived from the operation of any building or other campus improvement financed or the revenues of which are pledged in the manner provided in this chapter shall be collected by such officer or agent of the institution where the building or other campus improvement is located as the state board of higher education from time to time, may designate, and shall be accounted for by him such officer or agent, deposited, and remitted as in this section provided. The said board, in its resolution authorizing the bonds or in the trust agreement or agreements executed and delivered by the board, shall provide for the disposition of and accounting for all such revenues by such officer or agent, including the designation of a depository or depositories, the payment of expenses of operation and maintenance, the remittance of revenues to the paying agent designated in the bonds for payment of principal of and interest on the bonds when due, and the investment and disposition of revenues not immediately required for payment of expenses, principal, and interest. The board may designate as a depository for such revenues and funds either the state treasury or the Bank of North Dakota or the trustee under the trust agreement for the bondholders or a bank which is a duly designated depository for state funds or as provided in section 15-55-05. The said board may in its resolution authorizing the bonds or in the trust agreement or agreements executed and delivered by the board provide for an expense fund to be retained by the collecting officer for the purpose of paying and may direct him the collecting officer to pay the accrued or anticipated expenses of operation and maintenance of the building or campus improvement, and if the board so directs or if such expense fund is so provided, the collecting officer may pay such expenses as so directed by the board or from said fund. The funds required to be remitted to the state treasurer, if any, and any funds derived from revenues pledged to the bondholders shall be held by him the collecting officer or in the depository for such funds designated by the board in a special fund or funds, to be applied solely to the

payment of the principal and interest on said bonds, and the establishment of a reserve for future payments until all of said bonds and interest thereon have been fully paid; provided, that to the extent not prohibited or restricted by any covenant made with or for the benefit of the bondholders, the board may invest any such funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, or obligations of the state of North Dakota or of any municipality as defined in section 21-03-01 and may devote revenues not currently required for payment of principal and interest, for the creation or maintenance of a debt service reserve, or for expenses of operation and maintenance to such purposes as the board may from time to time designate, including replacing the furnishings and equipment of such building or buildings or campus improvements and improving said building or buildings or campus improvements. As principal and interest become due, the state auditor, not less than fifteen days prior to the payment dates, shall issue warrants upon the treasurer for the amount of such payment coming due, and the state treasurer shall make payment from any such fund of the amounts due.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 236

SENATE BILL NO. 2435
(Senators Lodoen, Ingstad, Yockim)
(Representatives Haugen, Larson)

REFUNDING BONDS

AN ACT to amend and reenact section 15-55-02.1, subdivision c of subsection 7 of section 21-03-06, section 40-27-13, and subsection 3 of section 40-36-13 of the North Dakota Century Code, relating to the refunding of bonds by the state board of higher education, counties, cities, townships, school districts, park districts, recreation service districts, and rural fire protection districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-55-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-55-02.1. Refunding bonds. The amount of refunding bonds which the state board of higher education may issue under this chapter shall not exceed the principal amount of the bonds to be refunded. Bonds may be refunded whether heretofore or hereafter issued, but no bonds may be refunded hereunder under this chapter unless they the bonds either mature or are callable for prior redemption under their terms within thirty years from the date of issuance of the refunding bonds, or unless the holder or holders thereof of the bonds voluntarily surrender them for exchange or payment. Outstanding bonds of more than one issue or series and bonds for refunding and other bonds to construct, furnish, or equip any building or addition or other campus improvement for which bonds are authorized may be combined into one issue or series and may provide for and restrict the combination of future series with the issue. Except as in this section otherwise provided, such in this section, the bonds shall must have such details and shall must be authorized and issued in the manner provided in this chapter provided. Refunding bonds so issued may carry forward for the payment of the refunding bonds such security and sources of payment as were pledged to the payment of the bonds refunded, and a combined issue of refunding and other bonds may combine such security and sources of payment with a pledge of the revenues of buildings or other campus improvements acquired in whole or in part from the

proceeds of the issue, including the security and sources of payment of any future series of refunding bonds or revenues of any building or other campus improvement acquired from the proceeds of a future series if and to the extent that provision is made for combination of future series with the issue. The word "building" as used in this section shall be construed to refer to means all the buildings or other campus improvements the revenues of which are pledged. Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold at either public or private sale, or may be sold in part and exchanged in part. There shall be is no interest rate ceiling on those issues issued solely for refunding purposes. The sale price may exceed the principal amount of refunding bonds and the excess may be used to provide for payment of redemption premiums of the bonds to be refunded and to provide for expenses of the issuance and sale of the bonds and the retirement of the outstanding bonds. All other proceeds of the sale shall must be, to the extent needed, be immediately applied to the retirement of the bonds to be refunded, or such the proceeds or investments thereof shall must be placed in escrow to be held and applied to the payment of the bonds to be refunded, or in the case of crossover refunding, must be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding bonds until the date the proceeds are applied to the payment or redemption of the bonds to be refunded.

Such The proceeds may, in the discretion or pursuant to covenant of the board, be invested in obligations of the United States of America, or in obligations fully guaranteed by the United States of America, but the obligations so purchased must have such maturities and bear such rates of interest payable at such times as will assure the existence of money sufficient to pay the bonds to be refunded when due or when redeemed pursuant to call for redemption, together with any interest and redemption premiums, if any. The proceeds or obligations so purchased shall must be deposited in trust with the trustee for the refunded bonds, or with the banking corporation or association which is the paying agent for the refunded bonds, or with the state treasurer, to be held, liquidated, and the proceeds of such liquidation paid out for the payment of the bonds to be refunded and interest and redemption premiums thereon as such the refunded bonds become due or subject to redemption under call for redemption previously made, or upon earlier voluntary surrender thereof with the consent of the board. The determination of the board in issuing refunding bonds that the issuance and sale of refunding bonds is necessary for the best interests of the institution and that the limitations herein imposed upon the issuance of refunding bonds have been met shall be is conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

SECTION 2. AMENDMENT. Subdivision c of subsection 7 of section 21-03-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. To refund outstanding bonds not yet due or to become due or subject to redemption and prepayment within six months, when in the judgment of the governing body the best interests of the municipality will be served thereby, through the reduction of debt service costs or the extension or adjustment of maturities in relation to the resources available for their payment. The proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and pay any premium required for redemption on such date; ~~and the~~ or in the case of a crossover refunding, shall be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding bonds until the date the proceeds are applied to the payment or redemption of the bonds to be refunded. The governing body's resolution authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds. Moneys on hand in the sinking fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, or other legally available funds of the municipality may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new refunding bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

SECTION 3. AMENDMENT. Section 40-27-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-27-13. Refunding callable funding bonds or refunding warrants - Terms and conditions. Any municipality may refund, according to the procedure set forth in this chapter, any funding bonds issued under this chapter which are callable prior to maturity or which shall be surrendered voluntarily for refunding, by the issuance of bonds upon the same terms and conditions except as to interest, whenever by so doing a saving in interest can be effected. Any municipality having valid outstanding refunding special improvement warrants or bonds issued pursuant to this chapter, which are due, or to become due within one year, in whole or in part as to principal or interest or both or which are redeemable either at the option of the municipality or with the consent of the warrant or bondholders, may issue new refunding special improvement bonds to refund such outstanding warrants or bonds, if there is not sufficient money in the fund or funds against which such outstanding refunding warrants or bonds are drawn to pay the principal or interest or both or if a deficiency is likely to occur in the fund or funds within one year for payment of principal or interest thereon. Such new bonds may be issued for the purpose of extending the maturities of the outstanding refunding warrants or bonds, or reducing the debt service thereon, or equalizing the general tax which the municipality may be, or may become, obligated to levy to discharge deficiencies in the fund or funds against which they are drawn. Such new bonds shall be issued according to the procedure set forth in this chapter for the issuance of the original refunding special improvement warrants or bonds. In any case where refunding improvement bonds are issued and sold six months or more before the earliest date on which all outstanding refunding improvement warrants or bonds of the issue to be refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the new bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each warrant or bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such warrant or bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and any premium required for redemption on such date; or in the case of a crossover refunding, shall be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding improvement bonds until the date the proceeds are applied to the payment or redemption of the bonds or warrants to be refunded. The governing body's resolution authorizing the new bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call

for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the new bonds. Moneys on hand in the refunding improvement bond fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, or other legally available funds of the municipality may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

SECTION 4. AMENDMENT. Subsection 3 of section 40-36-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Exchange or sell any refunding bonds more than six months in advance of the date on which the bonds being refunded mature or are redeemable in accordance with their terms to reduce the debt service costs, extend or adjust maturities in relation to the revenues pledged for payment of the bonds, permit the more advantageous sale of additional bonds, or any other purpose deemed necessary or desirable by the governing body, then the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable and called for redemption, to an earlier prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable and called for redemption, at the earlier redemption date, and any premium required for redemption on such date; or in the case of a crossover refunding, shall be invested in securities irrevocably appropriated to the payment of principal and interest on the refunding bonds until the date the proceeds are applied to the payment or redemption of the bonds to be refunded. The governing body's resolution authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all investments thereof, which shall be held in safekeeping by the escrow agent, and all income therefrom, and may provide for the call for redemption of all prepayable bonds in accordance with their terms. The securities to be purchased with the

escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds. Moneys on hand in the sinking fund maintained for the payment of the outstanding bonds, and not immediately needed for the payment of interest or principal due, or other legally available funds of the municipality may likewise be deposited in the escrow fund and invested in the same manner as the proceeds of the new bonds, to the extent consistent with the provisions of resolutions authorizing the outstanding bonds.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 237

HOUSE BILL NO. 1216
(Committee on Education)

(At the request of the State Board of Higher Education)

UND PARKING LOT BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds for the construction of revenue-producing parking lots at the university of North Dakota; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES. The state board of higher education, in accordance with chapter 15-55, is hereby authorized to issue and sell self-liquidating, tax-exempt bonds in any amount up to but not exceeding five hundred thousand dollars for the purpose of constructing revenue-producing parking lots at the university of North Dakota. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 2. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 1, or so much thereof as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the construction and the equipment of the facility authorized in section 1. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 238

SENATE BILL NO. 2163
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

GIFTED AND HANDICAPPED CHILD

AN ACT to amend and reenact subsections 2 and 3 of section 15-59-01 of the North Dakota Century Code, relating to the definition of the terms "gifted child" and "handicapped child".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 3 of Section 15-59-01 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Gifted child" means a gifted and talented child identified by professional, qualified persons, who, by virtue of outstanding abilities, is capable of high performance and who requires differentiated educational programs and services beyond those normally provided by the regular school program in order to realize his or her contribution to self and society.
3. "Handicapped child" means a child who is mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually handicapped, seriously emotionally disturbed, specific learning disabled, crippled orthopedically impaired, or otherwise health impaired who by reason thereof requires special education and related services.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 239

HOUSE BILL NO. 1199
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

SPECIAL EDUCATION BOARDING CARE COSTS

AN ACT to amend and reenact section 15-59-02.1 of the North Dakota Century Code, relating to boarding care and the use of family insurance proceeds or similar third party payments for the provision of related services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-59-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-02.1. Legislative intent - Special education. This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of handicapped children in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a handicapped child to benefit from special education.

The school administrator or his appointed representative or director of special education other than the child's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the handicapped student, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services which are provided for by limited state funds, the department of public instruction will be required to approve a contract for services based on an individualized education program developed for each handicapped student placed in a private school program or in programs outside the student's original special education unit.

The legislative assembly recognizes that a handicapped student whose individualized education program so requires is entitled to an

educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the handicapping condition. All summer programs attended by these students must have approval of the department of public instruction before receiving foundation aid or state special education reimbursement.

In the case of handicapped students who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, ~~except for including boarding care~~, be borne by state special education funds and school district funds. ~~It is the intent of the legislative assembly that boarding care costs be paid by state social service funds.~~

"All handicapped children have the right to a free appropriate education" means that all handicapped students have the right to special education and related services which must be provided at no cost to parents. "At no cost" means specifically designed instruction provided without charge but does not preclude expenses normally incurred or charged to parents of nonhandicapped children. Parents will assume such costs for a handicapped child as they would if the child was not handicapped. Personal items, including, but not limited to, hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a nonhandicapped child, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third party payments, in whatever amount is allowed, as long as there is no financial loss to the child or the child's parent, for determining a child's medically related handicapping condition or other required related services which results in the child's need for special education and related services. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a handicapped student resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include, but not be limited to, a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or

specially contracted transportation, or transportation provided by a handicapped student's parent or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds shall be for mileage costs only and shall not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the state department of health has authority under chapter 25-16 to provide early intervention services to meet the needs of handicapped children ages zero through two years, the legislative assembly recognizes this provision and requires the department of public instruction, the state department of health, and the department of human services to cooperate in planning and coordinating programs for these children.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 240

SENATE BILL NO. 2118
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

MULTIDISTRICT SPECIAL EDUCATION PROGRAMS

AN ACT to create and enact section 15-59.2-01.1 of the North Dakota Century Code, relating to the corporate powers and corporate names of multidistrict special education programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 15-59.2-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

15-59.2-01.1. Multidistrict special education programs - Corporate powers - Corporate name. Each multidistrict special education program is a body corporate for special education purposes and the name of each special education program must be chosen by the multidistrict board. The multidistrict special education program shall possess all powers and shall perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued, enter into contracts, and convey such real and personal property as come into its possession by will or otherwise. It may have a corporate seal by which its official acts may be attested.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 241

HOUSE BILL NO. 1578
(Representatives Hamerlik, Cleveland, Wentz)
(Senator Stenehjem)

MERIT SCHOLARSHIP PROGRAM

AN ACT to create and enact six new sections to chapter 15-62.2 of the North Dakota Century Code, relating to the establishment of a North Dakota merit scholarship program; and to amend and reenact sections 15-62.2-01, 15-62.2-02, and 15-62.2-04 of the North Dakota Century Code, relating to administration of the student financial assistance program and merit scholarship program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-62.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Eligible candidate" means a graduate of a high school in this state or a resident of this state for tuition purposes whose assessment composite scores on the test of academic achievement administered by the American college testing program place the student in at least the ninety-fifth percentile of all students taking the test for the year preceding January first of the year in which the student is applying for a scholarship, and who ranks in the upper twentieth percentile of the student's high school class.
2. "Eligible institution" means an accredited public or nonprofit private postsecondary institution in this state.
3. "Full-time resident student" means a person who is a graduate of a high school in this state or who is a resident of this state for tuition purposes and who is enrolled at an eligible institution carrying a course of study which is "full time" as defined by the eligible institution.

4. "High school class rank" means the position a merit scholarship candidate holds in the candidate's graduating class as of the seventh semester of the candidate's high school program.
5. "Merit scholar" means a full-time resident student who is awarded a merit scholarship or who has previously received a merit scholarship.
6. "Merit scholarship" means a financial award granted to a state scholar as determined by this chapter.

SECTION 2. A new section to chapter 15-62.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration of merit scholarship program. The board of higher education shall administer the merit scholarship program and shall adopt procedures and guidelines necessary to carry out the purposes of this chapter. The board of higher education shall establish appropriate procedures for fiscal control, fund accounting, and necessary reports.

SECTION 3. A new section to chapter 15-62.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reapplication eligibility - Amount of scholarships - Duration. Merit scholars are eligible to reapply for merit scholarships for subsequent academic years provided they maintain a 3.6 grade point average based upon a 4.0 grading system. The amount of the merit scholarship must equal the tuition charged at the merit scholar's eligible institution but may not exceed the amount charged for tuition at the state universities. A state scholar may receive a merit scholarship for not more than eight semesters or twelve quarters of undergraduate study, or until the attainment of the student's baccalaureate degree, whichever comes first.

SECTION 4. A new section to chapter 15-62.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Selection of merit scholars. All eligible candidates must be ranked by their composite scores on the test of academic achievement administered by the American college testing program. If two or more eligible students have the same scores, they must be ranked by their high school class rank calculated on a percentile basis. Merit scholarships must be offered to students in descending order according to this ranking until available funds have been expended, or until the pool of eligible applicants has been exhausted. Merit scholarships must be awarded in April of each year for the following academic year, or as soon thereafter as practical.

SECTION 5. A new section to chapter 15-62.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Payment of merit scholarships. One-half of the annual merit scholarship must be paid to each merit scholar at the beginning of the fall semester and one-half at the beginning of the spring semester for students attending institutions on the semester system. One-third of the merit scholarship must be paid to each merit scholar at the beginning of each quarter for merit scholars attending institutions on the quarter system. Payments must not be made until the merit scholar's enrollment and full-time resident student status has been certified by the eligible institution the student is attending. Merit scholarship funds must be paid by warrant-check prepared by the office of management and budget upon vouchers prepared for this purpose.

SECTION 6. A new section to chapter 15-62.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Use of funds - Refund policy. Merit scholarships may be used to defray costs of tuition, fees, room, board, books, supplies, and other expenses incidental to attending an eligible institution. If a merit scholar discontinues attendance before the completion of any semester or quarter for which a merit scholarship has been received, any refund is governed by the published refund or repayment policy of the eligible institution.

SECTION 7. AMENDMENT. Section 15-62.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-01. Student financial assistance program and merit scholarship programs - Establishment - Administrative responsibility. There is hereby established a The North Dakota student financial assistance program, which shall and merit scholarship programs are established to provide grants or merit scholarships, or both, to assist the following students:

1. Resident undergraduate students pursuant to section 15-10-19.
2. North Dakota resident students who have attended and graduated from a high school in a bordering state pursuant to section 15-40.2-10, who are attending qualified institutions of postsecondary education within North Dakota.
3. North Dakota resident students who, because of physical or mental handicap as certified by a physician, are attending postsecondary institutions out of state due to the lack of special services or facilities, or both, necessary to meet

the postsecondary educational needs of the handicapped students within North Dakota.

4. Merit scholars who qualify and are selected for merit scholarships pursuant to sections 1 through 6 of this Act.

The A student must be in substantial need of financial assistance to receive grants under the student financial assistance program. This program shall be administered by the The state board of higher education shall administer the student financial assistance program and the merit scholarship program.

SECTION 8. AMENDMENT. Section 15-62.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-02. Board of higher education - Powers and duties. The powers and duties of the board of higher education under this chapter shall be:

1. ~~To administer~~ Administer the North Dakota student financial assistance program, ~~and the North Dakota merit scholarship program~~ and ~~to~~ adopt functional rules ~~and regulations~~ regarding the eligibility and selection of grant ~~and merit scholarship~~ recipients.
2. ~~To determine~~ Determine the amount of individual grants, but not to exceed five hundred dollars per recipient per academic year ~~under the North Dakota student financial assistance program.~~
3. ~~To establish~~ Adopt for the North Dakota student financial assistance program, criteria for substantial need based upon the ability of the parents or guardian to contribute toward the applicant's educational expenses.
4. ~~To establish~~ Establish the appropriate procedures for fiscal control, fund accounting, and necessary reports.
5. ~~To apply~~ Apply for, receive, expend, and administer granted moneys from federal or private sources.

SECTION 9. AMENDMENT. Section 15-62.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-04. Funds received by the board of higher education - Where deposited - How appropriated - How expended. Funds received by the board of higher education ~~shall~~ must be deposited in the state treasury in a special ~~fund funds~~ to be known as the North Dakota student financial assistance fund ~~and the North Dakota merit scholarship fund~~ and expended in accordance with legislative ~~appropriation~~ appropriations. All expenditures from ~~this fund shall~~ these funds must be paid by warrant-check prepared by the office of management and budget upon vouchers submitted by the board of higher education.

Approved April 10, 1987
Filed April 14, 1987

ELECTIONS

CHAPTER 242

HOUSE BILL NO. 1356
(Representatives Wentz, Kretschmar)
(Senator Stenehjem)

ELECTION BALLOTS, NOMINATIONS, AND CERTIFICATES

AN ACT to create and enact a new section to chapter 16.1-07 of the North Dakota Century Code, relating to special write-in absentee ballots; to amend and reenact sections 4-22-17, 16.1-01-07, 16.1-04-03, 16.1-07-03, 16.1-07-04, 16.1-07-05, 16.1-11-06, 16.1-11-11, 16.1-11-17, 16.1-11-18, 16.1-11-19, 16.1-11-20, 16.1-11-30, 16.1-12-04, 16.1-12-05, 16.1-12-07, 16.1-12-09, 16.1-13-03, 46-06-03, and 61-24-03 of the North Dakota Century Code, relating to preparation of absentee ballots and filing deadlines; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-22-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-17. Nominating petitions - Petitions required - Final filing date. Any person running for the office of supervisor shall present to the county auditor of the county in which his the district lies a petition giving his that person's name, post-office address, title of the office, and containing the signatures of not less than twenty-five nor more than three hundred qualified electors of the district. When a district lies in more than one county, the petition shall be filed with the county auditor of the county where the candidate resides, and such county auditor shall certify to the county auditors of the other counties in which such district lies the name of the candidate filing such petition. No person shall participate directly or indirectly in the nomination for more than one person for each office to be filled. The final filing date for nominating petitions shall be no later than ~~fifty-five~~ sixty days before the day of the election and not later than four p.m. of such day.

Upon receipt of the petition or the certification as provided in this section, the county auditor shall without fee place the name

of the candidate so nominated on the no-party ballot at the ensuing general election.

SECTION 2. AMENDMENT. Section 16.1-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than ~~forty~~ fifty ~~five~~ fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county shall be advertised in the same manner.

The secretary of state shall, at the same time he certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form shall conform to the provisions of sections 16.1-06-09 and 16.1-06-09.1 and shall be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Sample ballots shall conform in form and style to samples of such ballots contained in the legal publications handbook prepared under subsection 5 of section 46-01-02. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a voting machine, depending upon the method of voting used in the area involved. Absentee voter ballots shall not be considered in determining which method of voting is used in an area. If both paper ballots and voting machines are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. At the same time as the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, shall be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure, in addition to the sample ballot listing ballot titles.

SECTION 3. AMENDMENT. Section 16.1-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-04-03. Time limitations. The authority granted by this chapter shall be exercised by the respective governing bodies no later than ~~sixty~~ seventy days before an election. If legislative reapportionment occurs, the authority granted by this chapter shall be exercised, as it relates to the establishment or reestablishment of voting precincts that may be required because of any change in

legislative districts, within thirty-five days after the effective date of the reapportionment.

SECTION 4. AMENDMENT. Section 16.1-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-07-03. Preparation and printing of ballots. For all general, primary, or special state elections, for all other special elections held at the same time as a general or primary election, for all county elections, and for all city and school elections, official ballots shall be prepared within the time limits provided in section 16.1-07-04. In the case of special elections wherein the election is called less than ~~thirty forty~~ or ~~fourteen twenty~~ days, as the case may be, before the election day, or where certification of candidates does not take place before the ~~thirty-day forty-day~~ or ~~fourteen-day twenty-day~~ limitations, the ballots for the use of absentee voters shall be made available as soon as possible. Only official ballots shall be used as absentee ballots and no indication shall be noted on such ballots that they are used by absentee voters except that the return envelope shall be marked "ballot of absentee voter". The county auditor, at the same time other absentee ballots are prepared, shall prepare, and have printed and available, ballots for use by overseas citizens qualified to vote in this state pursuant to section 16.1-07-01.

SECTION 5. AMENDMENT. Section 16.1-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-07-04. When ballots furnished proper officials. The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least ~~thirty forty~~ days prior to the holding of any general, special, or primary state election, a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections the auditor or clerk of the city, the clerk of the school district, or any other officer required by law to prepare city or school election ballots, shall prepare, have printed and available for distribution to the public at least twenty days prior to the holding of any city or school election, a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election.

SECTION 6. AMENDMENT. Section 16.1-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-07-05. Time for making application for ballot. At any time within ~~forty sixty~~ days next preceding an election, any qualified elector expecting to be absent on election day as provided in section 16.1-07-01 may make application to the county auditor, the

auditor or clerk of the city, or the clerk of the school district, as the case may be, for an official ballot to be voted at such election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. No auditor or clerk shall issue ballots for absentee voters on the day of the election.

SECTION 7. A new section to chapter 16.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Procedures for voting with special write-in absentee ballot.

1. Notwithstanding any other provision of this chapter, a qualified absentee elector may apply to the county auditor not earlier than ninety days before an election for a special write-in absentee ballot. This ballot may be used to vote for presidential electors and members of the United States senate and of the United States house of representatives.
2. The application for a special write-in absentee ballot may be made on a form prescribed by the secretary of state. In order to qualify for a special write-in absentee ballot, the voter shall state on the application that the voter is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated or extremely remote areas of the world.
3. Upon receipt of the application, the county auditor shall issue the special write-in absentee ballot, which must be in the form prescribed by the secretary of state. The ballot must permit the elector to vote by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

SECTION 8. AMENDMENT. Section 16.1-11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-06. State candidate's petition or political party certificate of endorsement required to get name on ballot - Contents - Filing. Every candidate for United States senator, United States representative, a state office except the office of state senator or state representative, and judges of the supreme and district courts shall, not more than ~~sixty-six~~ seventy nor less than ~~fifty-five~~ sixty days, and before four p.m. of the ~~fifty-fifth~~ sixtieth day, prior to any primary election, present to the secretary of state either:

1. A certificate of endorsement signed by the state chairman of any legally recognized political party containing the candidate's name, post-office address, the title of the

office to which he aspires, and the party which he represents; or

2. A petition containing the following:
 - a. The candidate's name, post-office address, and the title of the office to which he aspires.
 - b. The name of the party the candidate represents if the petition is for an office under party designation.
 - c. The signatures of qualified electors, the number of which shall be determined as follows:
 - (1) If the office is under party designation, the signatures of three percent of the total vote cast for the candidates of the party with which the candidate affiliates, for the same position at the last general election. However, no more than three hundred signatures shall be required.
 - (2) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
 - (3) If the office is under the no-party designation, at least three hundred signatures.
 - d. The mailing address and the date of signing for each signer.

If the petition or certificate of endorsement is for the office of governor or lieutenant governor, it shall contain the names and other information required of candidates for both those offices. If the petition or certificate of endorsement is mailed, it shall be in the possession of the secretary of state before four p.m. of the ~~fifty-fifth~~ sixtieth day prior to the primary election.

SECTION 9. AMENDMENT. Section 16.1-11-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-11. County and legislative district candidates' petitions - Filing - Contents. Every candidate for a county or district office shall, not more than seventy nor less than ~~fifty-five~~ sixty days and before four p.m. of the ~~fifty-fifth~~ sixtieth day prior to any primary election, present to the county auditor of the county in which he resides either:

1. A certificate of endorsement signed by the district chairman of any legally recognized political party containing the candidate's name, post-office address, the title of the office to which he aspires, and the party which he represents; or

2. A petition containing the following:
 - a. The candidate's name, post-office address, and the title of the office to which he aspires.
 - b. The name of the party the candidate represents, only if it is a petition for an office which is under party designation.
 - c. The signatures of qualified electors, the number of which shall be determined as follows:
 - (1) If the office is under no party designation, the signatures of not less than two percent and not more than five percent of the total vote cast for the office at the most recent general election at which the office was voted upon.
 - (2) If the office is under a party designation, the signatures of the same percentage as provided in paragraph 1 of the total vote cast for the candidate of the party represented for the same position at the most recent general election at which the office was voted upon.
 - (3) If there were more than one party candidate, the signatures of the same percentage as provided in paragraph 1 of the total number of votes for all party candidates divided by the number of party candidates.
 - (4) If no candidate was elected or no votes were cast for an office at any general election, the number of signers equal to the percentage as provided in paragraph 1 applied to the total average vote cast for the offices of sheriff and county auditor at the most recent general election at which those officers were elected in the petitioner's county or district. This average shall be determined by dividing by two the total vote cast for those offices.
 - (5) In no case shall more than three hundred signatures be required.
 - d. The mailing address and date of signing for each signer.

If the petition or certificate of endorsement is mailed, it shall be in the possession of the county auditor before four p.m. on the ~~fifty-fifth~~ sixtieth day prior to the primary election.

SECTION 10. AMENDMENT. Section 16.1-11-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-17. Filling vacancy in party primary election ballot permissible - Petition - Affidavit. When the time for filing a petition or certificate of endorsement provided for in this chapter has expired, and a vacancy exists in the primary election ballot of any political party because no petition or certificate of endorsement has been filed for the nomination, the vacancy may be filled by a certificate of endorsement and affidavit or a petition and affidavit as provided in section 16.1-11-14. The certificate of endorsement and affidavit or petition and affidavit shall be filed with the proper officer at least ~~fifty-five~~ fifty-six days before the primary election and before four p.m. on the ~~fifty-fifth~~ fifty-sixth day. If the forms are mailed, they shall be in the possession of the designated officer before four p.m. on the day due.

SECTION 11. AMENDMENT. Section 16.1-11-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary election because of the unavailability of the person who is seeking nomination by petition, that vacancy shall not be filled except by petition.
4. If a vacancy occurs in a slate of candidates after the candidates have been nominated at the primary election, the proper state or district executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state the certificate setting forth the cause of the vacancy,

the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state, in certifying the nomination to the various auditors, shall insert the name of the person who has been nominated to fill the vacancy in place of the original nominee. If the secretary of state already has forwarded his certificate, he forthwith shall certify to the auditor of the proper county or counties the name and post-office address of the person nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom the nominee is substituted. Failure to publish the name of a person substituted shall not invalidate the election.

With the exception of vacancies filled pursuant to section 16.1-12-08, vacancies to be filled according to the provisions of subsection 1, 2, or 3 of this section may be filled not later than ~~fifty-five~~ fifty-six days prior to the election, and vacancies to be filled according to the provisions of subsection 4 may be filled not later than fifty-five days prior to the election.

SECTION 12. AMENDMENT. Section 16.1-11-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-19. Filling vacancy existing on no-party ballot - Petition required - Time of filing. If a vacancy exists on a no-party ballot for a state office or for judge of a district court, the vacancy may be filled by filing with the secretary of state, before four p.m. on the ~~fifty-fifth~~ fifty-sixth day prior to the primary election, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it shall be in the possession of the secretary of state before four p.m. on the ~~fifty-fifth~~ fifty-sixth day prior to the primary election. The petition for the nomination of any person to fill the vacancy shall be signed by qualified electors equal in number to at least two percent of the total vote cast for governor at the most recent general election in the state or district at which the office of governor was voted upon, but in no case shall more than three hundred signatures be required.

If a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor, before four p.m. of the ~~fifty-fifth~~ fifty-sixth day prior to the primary election, a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it shall be in the possession of the county auditor before four p.m. on the ~~fifty-fifth~~ fifty-sixth day

prior to the primary election. The petition for the nomination of any person to fill the vacancy shall be signed by qualified electors equal in number to at least thirty percent of the total vote cast for governor at the most recent general election in the county or district at which the office of governor was voted upon, but in no case shall more than three hundred signatures be required. A vacancy in the no-party ballot shall be deemed to exist when a candidate who was qualified by filing a petition pursuant to section 16.1-11-06 or 16.1-11-11 shall die, resign, or otherwise become disqualified to have his name printed on the ballot.

SECTION 13. AMENDMENT. Section 16.1-11-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-20. Certified list of nominees transmitted to county auditor by secretary of state. At least ~~fifty~~ fifty-five days before any primary election, the secretary of state shall transmit to each county auditor a certified list containing the names and post-office addresses of each person for whom nomination papers have been filed in his office and who are entitled to be voted for at the primary election. A designation of the office for which each is a candidate, and if applicable, the party or principle represented by each shall be included.

SECTION 14. AMENDMENT. Section 16.1-11-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-30. Separate column on primary election ballot required for each political party. The following political parties shall be provided with separate columns on primary election ballots:

1. The republican party.
2. The democrat party.
3. Any party which cast five percent of the total votes cast for governor at the last general election.
4. Any other party, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the ~~fifty-fifth~~ sixtieth day prior to a primary election, asking that a column be provided for such party, naming it, and stating the platform principles thereof. If such petition is mailed it shall be in the possession of the secretary of state before four p.m. on the ~~fifty-fifth~~ sixtieth day. Candidates of such party shall be entitled to the same rights and privileges as those of other parties.

Columns shall be arranged so that any column shall be in an inverted position when the adjacent column or columns are in an upright position.

SECTION 15. AMENDMENT. Section 16.1-12-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-04. Certificates of nomination - Time and place of filing.

1. The following certificates of nomination shall be filed with the secretary of state, with written notice of that filing filed with the county auditor of each county included within the district wherein the offices are to be elected:
 - a. Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state.
 - b. Certificates of nominations for nominees for offices to be filled by the qualified electors of any district greater than a county.
 - c. Certificates of nomination for nominees for legislative offices.
2. Certificates of nomination for nominees for county offices shall be filed with the county auditor of the respective counties in which the officers are to be elected.
3. Certificates of nomination required to be filed with the secretary of state shall, without regard to the means of delivery, be filed and in the actual possession of the secretary of state not later than four p.m. on the ~~fifty-fifth~~ sixtieth day prior to the general election day.
4. Certificates of nomination required to be filed with the county auditor shall, without regard to the means of delivery, be filed and in the actual possession of the county auditor not later than four p.m. on the ~~fifty-fifth~~ sixtieth day prior to the general election day.
5. In the case of special elections called to fill vacancies, certificates of nomination shall be filed and in the actual possession of the appropriate officer, regardless of the means of delivery, not later than four p.m. on the ~~fifty-fifth~~ sixtieth day prior to the day of election.
6. The secretary of state and the several county auditors shall keep on file for six months all certificates of nomination filed with them under this chapter, and all certificates of nomination shall be open to public inspection during regular business hours.

SECTION 16. AMENDMENT. Section 16.1-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-05. Secretary of state to certify nominations to county auditor - Duty of county auditor. Not less than ~~fifty~~ fifty-five days prior to any general or special election to fill any state or district office, the secretary of state shall certify to the county auditor of each county in which any elector may by law vote for candidates for the office, the name and post-office address of each person nominated for the office as shown on the certificates of nomination filed in his office. Upon receipt of that certification, the county auditor shall compare it with the written notice of filing of certificates of nomination filed with the auditor pursuant to this chapter, and shall report any discrepancies to the secretary of state, who shall take corrective action prior to sending the notice of officers to be chosen at the next general election as required by section 16.1-13-03.

SECTION 17. AMENDMENT. Section 16.1-12-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-07. If nominee declines - Certificate void. Any person intending to decline a nomination shall do so by filing written notice of that intention with the officer with whom the certificate nominating him is filed. If the written notice is filed with the appropriate officer at least ~~fifty-five~~ sixty days, and before four p.m. on the ~~fifty-fifth~~ sixtieth day before the election, the nomination shall be void. If written notice is mailed, it shall be in the physical possession of the appropriate officer before four p.m. on the ~~fifty-fifth~~ sixtieth day before the election.

SECTION 18. AMENDMENT. Section 16.1.12-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-09. Filling vacancy existing on no-party ballot - Petition required - Time of filing. Whenever a vacancy shall exist on a no-party ballot for a state office or for judge of a district court, such vacancy may be filled by filing with the secretary of state, at least ~~fifty-five~~ sixty days prior to the general election and before four p.m. on the ~~fifty-fifth~~ sixtieth day, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If the petition is mailed, it shall be in the physical possession of the secretary of state before four p.m. on the ~~fifty-fifth~~ sixtieth day prior to the general election. The petition for the nomination of any person to fill such vacancy shall be signed by qualified electors equal in number to at least two percent of the total vote cast for the office of governor in the state or district, at the most recent general election at which the office of governor was voted upon, but in no case shall more than three hundred signatures be required.

Whenever a vacancy shall exist on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor at least ~~thirty-five~~ sixty days prior to the general election and before four p.m. of the ~~thirty-fifth~~ sixtieth day a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If such petition is mailed or otherwise delivered, it shall be in the possession of the county auditor before four p.m. on the ~~thirty-fifth~~ sixtieth day prior to the general election. The petition for the nomination of any person to fill the vacancy shall be signed by qualified electors equal in number to at least thirty percent of the total vote cast for the office of governor at the most recent general election in the county or district at which the office of governor was voted upon, but in no case shall more than three hundred signatures be required.

A vacancy in the no-party ballot shall be deemed to exist when:

1. A candidate nominated at the primary election shall die, resign, or otherwise become disqualified to have his name printed on the ballot at the general election.
2. No candidates were nominated at the primary election because the office did not yet exist.
3. The timing of the vacancy in an office makes it impossible to have it placed on the primary ballot.

SECTION 19. AMENDMENT. Section 16.1-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-03. Secretary of state to give notice to county auditor of officers to be elected. Not later than ~~sixty~~ sixty seven days prior to the date of election, the secretary of state shall direct and cause to be delivered to the county auditor of each county a notice specifying each officer to be chosen at the next general election. The publication of the sample ballot by the county auditor shall constitute the notice of the secretary of state in regard to the offices and candidates to be voted upon at the general election.

SECTION 20. AMENDMENT. Section 46-06-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-06-03. Application to place name on ballot at primary election. The county auditor shall place the name of a newspaper upon the primary election ballot if the newspaper is qualified to serve as the official newspaper within the county and if, not more than seventy days nor less than ~~thirty-five~~ sixty days and before four p.m. of the ~~thirty-fifth~~ sixtieth day prior to the primary election, an application asking that the name of the newspaper be placed upon the

ballot to be voted upon for nomination as official newspaper of the county is filed with the county auditor by a person, partnership, or corporation owning or operating the newspaper. The county auditor shall endorse upon the application the name of the newspaper and the date upon which the application is ~~presented to his office~~ filed.

SECTION 21. AMENDMENT. Section 61-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-03. Election of directors of the Garrison Diversion Conservancy District. A director of the Garrison Diversion Conservancy District shall be nominated and elected in each county in the district. Any person who is a resident and qualified elector of the county who aspires to the office of director of the Garrison Diversion Conservancy District shall, not more than seventy days or less than ~~fifty-five~~ sixty days and before four p.m. of the ~~fifty-fifth~~ sixtieth day prior to any primary election preceding a general election at which a director of the district is to be elected, present to the county auditor a petition giving ~~his~~ that person's name, post-office address, the title of the office "Director of the Garrison Diversion Conservancy District", and containing the signatures of not less than fifty nor more than three hundred qualified electors of the county to which each signer has added ~~his~~ the signer's residence with street number, if any, and the date of signing.

The petition shall be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA,
County of -----

I, -----, being duly sworn, depose and say that I reside in the county of ----- and State of North Dakota; that I am a qualified elector therein; that I am a candidate for nomination to the office of director of the Garrison Diversion Conservancy District to be chosen at the primary election to be held on the ----- day of -----, 19---, and I do hereby request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for said office.

Subscribed and sworn to before me this -----
day of -----, 19--.

Notary Public, North Dakota

Upon receipt of the petition the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the aforesaid office of director. The two candidates receiving the highest number of votes if more than two are running shall be nominated.

The names of the candidates so nominated at the primary election shall be placed on the no-party ballot at the ensuing general election and the candidate receiving the highest number of votes shall be duly elected.

At the primary and general elections votes shall be canvassed, returned certified, and certificates of nomination and election issued in the manner provided by law for the nomination and election of county officers.

SECTION 22. EFFECTIVE DATE. This Act becomes effective on July 1, 1988.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 243

SENATE BILL NO. 2151
(Holmberg)

INITIATIVE OR REFERENDUM PETITIONS

AN ACT to amend and reenact subsections 1, 2, and 3 of section 16.1-01-09 of the North Dakota Century Code, relating to requirements for initiative or referendum petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 2, and 3 of section 16.1-01-09 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure, the printed name, signature, and address of the committee member, and notarization of the signature.

Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement which must fairly represent the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.

2. No person shall sign any initiative, referendum, or recall petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person shall sign any petition more than once, and each signer shall add the signer's post-office address including the signer's residential address or post-office box number and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. A

referendum or initiative petition must be in substantially the following form:

REFERENDUM [INITIATIVE] PETITION
TO THE SECRETARY OF STATE, STATE OF NORTH DAKOTA

We, the undersigned, being qualified electors request [House (Senate) Bill ----- passed by the ----- Legislative Assembly] [the following initiated law] be placed on the ballot as provided by law.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

Name	Address
------(Chairman)	-----
-----	-----

BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their entire post-office address, including post office box number, and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

Month,	Name of	Post-Office Address	
Day,	Qualified	Residential Address	City,
Year	Elector	or P.O. Box No.	State
1.	-----	-----	-----
2.	-----	-----	-----
3.	-----	-----	-----

- 4. -----
- 5. -----
- 6. -----
- 7. -----
- 8. -----

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter. In this section for referral petitions "full text of the measure" means the bill as passed by the legislative assembly excluding the session and sponsor identification. In this section for initiative petitions "full text of the measure" means an enacting clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA" and the body of the bill. If the measure amends the law, all new statutory material must be underscored and all statutory material to be deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the text of the law being repealed.

- 3. Each copy of any petition provided for in this section, before being filed, must have attached thereto an affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss.
 County of -----)
 (county where signed)

I, -----, being duly sworn, depose and say
 (circulator)
 that I am a qualified elector; that I reside
 at -----;
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

 (signature of circulator)
 Subscribed and sworn to before me this ----- day
 of -----, 19---, at -----, North Dakota.
 (city)

(Notary Seal) -----
 (signature of notary)
 Notary Public, North Dakota
 My commission expires-----

Approved March 20, 1987
 Filed March 23, 1987

CHAPTER 244

HOUSE BILL NO. 1087
(Linderman, Wilkie)

PETITION CIRCULATION PAYMENTS

AN ACT to amend and reenact section 16.1-01-12 of the North Dakota Century Code, relating to payment for circulation of an initiative, referendum, or recall petition; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-01-12. Election offenses - Penalty. It is unlawful for a person to:

1. Fraudulently alter another person's ballot or substitute one ballot for another, or to otherwise defraud a voter of his vote.
2. Obstruct a qualified elector on the way to a polling place.
3. Vote or offer to vote more than once in any election.
4. Knowingly vote in the wrong election precinct or district.
5. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
6. Knowingly exclude a qualified elector from voting, or knowingly allow an unqualified person to vote.
7. Knowingly vote when not qualified to do so.
8. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.

9. Sign a name other than his own name to an initiative, referendum, recall, or any other election petition.
10. Circulate an initiative, referendum, recall, or any other election petition not in its entirety, or circulate such a petition when unqualified to do so.
11. Pay or offer to pay any person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions and fully disclose all expenditures and revenues upon submission of the petitions to the secretary of state.
12. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.
- ~~12-~~ 13. Willfully violate any rule adopted by the secretary of state pursuant to this title.
- ~~13-~~ 14. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the same to be false, or willfully deface, destroy, or conceal any statement or certificate entrusted to his care.
- ~~14-~~ 15. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.

A violation of subsections 1 through ~~13~~ 14 is a class A misdemeanor. Any signature obtained in violation of subsection 11 is void and may not be counted. A violation of subsection ~~14~~ 15 occurring after an election but before the final canvass, or during an election, is a class C felony, and in other cases is a class A misdemeanor.

Every act which by ~~the provisions of~~ this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 245

SENATE BILL NO. 2479
(Senators Stenehjem, Olson, Heigaard)
(Representatives Mertens, Strinden)

SPECIAL ELECTIONS

AN ACT to create and enact a new section to chapter 16.1-01 of the North Dakota Century Code, relating to the calling of a special election by the governor; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special election - Special procedures. Notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a special session of the legislative assembly has been held, any of the ninety-day period for the submission of a referendum petition to the secretary of state with respect to any measure enacted during the special session occurs during a regular legislative session, and a referendum petition has been submitted to refer a measure or part of a measure enacted during the special session.

The secretary of state shall reduce all the deadlines, including those necessary for filing, appointments, and election material preparation, to ensure that the election is held as allowed by this section. The provisions of chapter 46-02 concerning competitive bidding do not apply to this election.

SECTION 2. **EMERGENCY.** This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state.

Approved February 10, 1987
Filed February 10, 1987

CHAPTER 246

SENATE BILL NO. 2551
(Stenehjem)

(Approved by the Committee on Delayed Bills)

SPECIAL ELECTION NOTICE

AN ACT to amend and reenact the new section to chapter 16.1-01 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2479, as approved by the fiftieth legislative assembly, relating to the calling of a special election by the governor; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. The new section to chapter 16.1-01 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2479, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Special election - Special procedures. Notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a special session of the legislative assembly has been held, any of the ninety-day period for the submission of a referendum petition to the secretary of state with respect to any measure enacted during the special session occurs during a regular legislative session, and a referendum petition has been submitted to refer a measure or part of a measure enacted during the special session.

The secretary of state shall reduce all the deadlines, including those necessary for filing, appointments, and election material preparation, to ensure that the election is held as allowed by this section. If time constraints make it impossible for a county auditor to comply with the publication requirements of section 16.1-13-05, the sample ballot and election notice may be published only once. The provisions of chapter 46-02 concerning competitive bidding and of subsection 2 of section 16.1-01-01 and subsection 2 of section 16.1-05-03 with respect to election training sessions do not apply to this election.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 247

SENATE BILL NO. 2197
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

NATIONAL CONVENTION EXPENSES

AN ACT to repeal section 16.1-03-15 of the North Dakota Century Code, relating to expenses of delegates to national conventions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 16.1-03-15 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 248

SENATE BILL NO. 2467
(Senators Nelson, Stenehjem, Holmberg)
(Representative Dalrymple)

POLL CHALLENGERS AND CHECKERS

AN ACT to amend and reenact section 16.1-05-06 of the North Dakota Century Code, relating to election poll challengers and poll checkers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-05-06. Challenging right of person to vote - Affidavit required - Penalty for false swearing - Optional poll checkers.

1. One poll challenger appointed by the district chairman of each political party represented on the election board shall be entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party shall be entitled to be in attendance at each polling place at any one time. If any person offering to vote is challenged by a poll challenger or by a member of the election board, the challenged person, unless the challenge is withdrawn, shall stand aside and shall not vote unless ~~he~~ the challenged person executes an affidavit, acknowledged before the election inspector, that he is a legally qualified elector of the precinct. The affidavit shall include the name and address of the affiant and the address of the affiant at the time the affiant last voted. Written notice of the penalty for making a false affidavit and that the county auditor will verify the affidavits shall be prominently displayed at the polling place in a form prescribed by the secretary of state. Any person who falsely swears in order to ~~cast his~~ vote shall be guilty of an offense and shall be punished pursuant to chapter 16.1-01. The county auditor shall verify randomly at

least ten percent of the affidavits signed in the county, and shall report all violations to the state's attorney.

2. In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided such poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers shall be qualified electors of the district in which they are assigned.
3. No poll challenger or checker may be a member of the election board.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 249

SENATE BILL NO. 2144
(Committee on Judiciary)
(At the request of the Secretary of State)

WRITE-IN VOTES

AN ACT to amend and reenact section 16.1-06-04 of the North Dakota Century Code, relating to instructions placed on ballots for voters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under the provisions of this title for use in precincts in which voting machines or electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at such election.
4. Have the language "Vote for ----- name (or names) only" placed immediately under the name of each office.
5. Have printed thereon "Place a crossmark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.

7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark his choice for each candidate opposite the name of such candidate, and such space shall precede or follow the candidate's name on the same line in a uniform manner.
8. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted."

Any precinct which uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems purchased after June 30, 1985, are used, the ballot card must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot card must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters shall be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 250

HOUSE BILL NO. 1271
(Representative Strinden)
(Senator Holmberg)

INITIATIVE AND REFERRAL CONTRIBUTIONS

AN ACT to create and enact a new section to chapter 16.1-08.1 of the North Dakota Century Code, relating to reporting requirements for contributions for initiative and referral campaigns; and to amend and reenact sections 16.1-08.1-01 and 16.1-08.1-04 of the North Dakota Century Code, relating to campaign contribution statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-08.1-01. Definitions. As used in this chapter, unless the context otherwise plainly requires:

1. "Candidate" means an individual whose name is presented for nomination to public office at any primary election whether the individual is actually nominated or not; an individual whose name is printed as a candidate on an official ballot used at any election; an individual who seeks election through write-in votes; an individual who is soliciting or accepting campaign contributions for his or her the individual's own political purpose; or an individual who has sought election to office and who is soliciting or accepting contributions to pay off any campaign debt or to raise money for any political purpose.
2. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to office, of aiding the circulation of statewide initiative or referendum petitions, or of promoting passage or defeat of a statewide initiated or referred measure. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and

includes funds received by a political committee which are transferred to that committee from another political committee or other source. This definition does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money spent by a candidate on his the candidate's own behalf.
 - d. Any money received from a district or state committee of a political party, as established pursuant to sections 16.1-03-06 and 16.1-03-08, except for contributions reported pursuant to section 16.1-08.1-03.
3. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, or other organization or group of persons.
 4. "Political committee" means any committee, club, association, or other group of persons which receives contributions primarily for political purposes.
 5. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
 6. "Political purpose" or "political purposes" means any activity undertaken in support of or in opposition to the election or nomination of a candidate.
 7. "Public office" means every statewide or legislative office to which persons can be elected by vote of the people under the laws of this state.

SECTION 2. A new section to chapter 16.1-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Statement required of persons promoting passage or defeat of initiated or referred measure - Contents. Any person who is soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of any statewide initiated or referred measure at any primary, general, or special election shall file a statement in accordance with this section if the person has received

any contributions from a person in excess of one hundred dollars in the aggregate during the calendar year. The statement must contain a detailed statement of all contributions received from each person which exceed one hundred dollars in the aggregate for the calendar year.

The statement must include the name and mailing address of all contributors listed. All statements filed pursuant to this section must be consecutive and, taken together, must cover the entire calendar year's receipts up through the cutoff date for each statement. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this section.

The statement required of a person must be filed with the secretary of state no later than four p.m. on the tenth day prior to the date of the general, primary, or special election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the fifteenth day prior to the date of the general, primary, or special election. A complete statement for the entire calendar year must be filed no later than four p.m. on the thirtieth day of January of the following calendar year. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than four p.m. on the next business day on which the office of the secretary of state is open.

The secretary of state shall prescribe the form of all statements required by this section.

SECTION 3. AMENDMENT. Section 16.1-08.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-08.1-04. Supplemental statement required on large contributions received after original statement - Filing time. If any candidate shall receive or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure receives any contribution of five hundred dollars or more in the fifteen-day period prior to any general, primary, or special election from any individual contributor, that candidate or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02 or section 2 of this Act, stating the name and street address of such contributor and the amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 251

HOUSE BILL NO. 1069
(Shaft, Strinden)

POLLING PLACE SALES OR OFFERS

AN ACT to create and enact a new section to chapter 16.1-10 of the North Dakota Century Code, relating to sales or distribution of materials at polling places on election day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sale or distribution at polling place. No person may approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. This prohibition applies in any polling place or within one hundred feet from any entrance leading into a polling place on election day.

Approved March 13, 1987
Filed March 16, 1987

CHAPTER 252

HOUSE BILL NO. 1167
(Enget)

NOMINATION CERTIFICATE SIGNING

AN ACT to create and enact a new section to chapter 16.1-11 of the North Dakota Century Code, relating to election endorsements; and to amend and reenact section 16.1-12-03 of the North Dakota Century Code, relating to participation in election nominations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Participation in endorsements for nomination. No person may participate directly or indirectly in the endorsement for nomination of more than one person for each office to be filled, except a person may sign a petition for placement of a candidate's name on the primary ballot:

1. For more than one person for each office for an office not under party designation.
2. For more than one person for each office for an office under party designation only if all the candidates for whom the person signs a petition for an office are running under the same party designation.

Except for persons allowed to seek nomination to more than one office pursuant to section 16.1-12-03, no person may accept endorsement for nomination by certificate or petition to more than one office. No political party is entitled to endorse for nomination by certificate more than one set of nominees.

* SECTION 2. AMENDMENT. Section 16.1-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 16.1-12-03 was also amended by section 1 of Senate Bill No. 2420, chapter 254.

16.1-12-03. Certificate of nomination to contain only one name - Person to participate in only one nomination - Exception. No certificate of nomination provided for by this chapter, except in the case of presidential electors, ~~shall~~ may contain the name of more than one nominee for each office to be filled. No person ~~shall~~ may participate directly or indirectly in the nomination of more than one person for each office to be filled, ~~and no~~ on the general election ballot, except a person may sign a certificate of nomination by petition for more than one person for each office. No person shall may accept a nomination to more than one office on the general election ballot. No political party ~~shall~~ be is entitled to more than one set of nominees on the official general election ballot.

Approved April 14, 1987

Filed April 15, 1987

CHAPTER 253

SENATE BILL NO. 2281
(Holmberg)

TAX COMMISSIONER ON PARTY BALLOT

AN ACT to amend and reenact sections 16.1-11-08 and 16.1-11-26 of the North Dakota Century Code, relating to the election of the tax commissioner on a party ballot.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-08. Reference to party affiliation in petition and affidavit prohibited for certain offices. No reference shall be made to a party ballot or to the party affiliation of a candidate in a petition and affidavit filed by or on behalf of a candidate for nomination in the primary election to an elective county office, the office of judge of the supreme court, judge of the district court, commissioner of labor, or superintendent of public instruction, ~~or tax commissioner~~.

SECTION 2. AMENDMENT. Section 16.1-11-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-11-26. Order in which names of offices shall appear on ballot. The primary election ballot for party nominations shall contain the following offices in the following order under each party column:

1. Congressional:

United States senator
representative in Congress

2. Legislative:

state senator ----- district
member of house of representatives ----- district

3. State offices:

governor and lieutenant governor

secretary of state

state auditor

state treasurer

attorney general

commissioner of insurance

commissioner of agriculture

commissioner of public service

tax commissioner

Approved April 1, 1987

Filed April 2, 1987

CHAPTER 254

SENATE BILL NO. 2420
(Holmberg)

MULTIPLE OFFICE CANDIDATES

AN ACT to amend and reenact section 16.1-12-03 of the North Dakota Century Code, relating to the nomination and election of a person to more than one office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 16.1-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-03. Certificate of nomination to contain only one name - Person to participate in only one nomination - Exception. No certificate of nomination provided for by this chapter, except in the case of presidential electors, ~~shall~~ may contain the name of more than one nominee for each office to be filled. ~~No~~ Except for persons holding or seeking nominations to offices filled by electors of the entire state or of any district greater than a county and except for persons holding or seeking nomination to the office of county judge, any person elected or appointed to an office appearing on the no-party ballot or seeking nomination and election to a no-party office may also seek nomination to legislative office and may serve in the legislative assembly. Except as may be permitted in this section, no person ~~shall~~ may participate directly or indirectly in the nomination of more than one person for each office to be filled, and no person ~~shall~~ may accept a nomination to more than one office. No political party ~~shall~~ ~~be~~ ~~is~~ entitled to more than one set of nominees on the official ballot.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 16.1-12-03 was also amended by section 2 of House Bill No. 1167, chapter 252.

CHAPTER 255

SENATE BILL NO. 2284
(Holmberg)

ELECTION MATERIALS

AN ACT to amend and reenact sections 16.1-13-21 and 16.1-13-22 of the North Dakota Century Code, relating to preparation of election materials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-13-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-21. Producing, opening, and delivering ballots upon opening of polls on election day. Upon arrival at the poll of all election board members, or at the latest, upon the opening of the polls poll, the inspector of election in each precinct shall produce the sealed package of official ballots and publicly open them.

SECTION 2. AMENDMENT. Section 16.1-13-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-22. **Delivering ballot to elector - Stamping.** The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot or ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect his the elector's right to vote the elector should observe the stamping and initialing of the ballot verify that the ballot has been stamped and initialed. When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election judge, the ballot card and ballot envelope shall not be deposited in the ballot box, but shall be marked spoiled and placed with the other spoiled ballots. At primary elections, the inspector or judge shall also inform each elector that if he the elector splits his the elector's ballot or votes for candidates of more than one party his the elector's ballot will be

rejected. Before delivering any ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot or ballot card and ballot envelope the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall write his or her initials thereon. Failure to stamp and initial a ballot or ballot card in the proper place does not invalidate such ballot or ballot card, but a complete failure to stamp and initial a ballot or ballot card does invalidate the ballot or ballot card. Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 256

SENATE BILL NO. 2307
(Holmberg, J. Meyer, Lashkowitz, Maxson, Nalewaja)

VOTER DISABILITIES

AN ACT to amend and reenact section 16.1-13-27 of the North Dakota Century Code, relating to the disability of an elector.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-13-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-27. Disability of elector. Any elector who declares to the judges of election that the elector cannot read the English language, or that because of blindness or other disability is unable to mark the elector's ballot, upon request, may receive the assistance of any person of the elector's choice, other than the elector's employer, officer or agent of the elector's union, a candidate running in that election, or a relative of a candidate as provided in subsection 2 of section 16.1-05-02, in marking the elector's ballot. If the elector requests the assistance of a member of the election board, however, the elector shall receive the assistance of both election judges in the marking of the elector's ballot. No one assisting any elector in marking a ballot under this chapter shall give information regarding the same. No elector, other than one who is unable to read the English language or one who because of disability is unable to mark a ballot, shall divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark the elector's ballot. In order to comply with the reasonable accessibility requirement of subsection 2 of section 16.1-04-02, in any polling place not accessible to an elector suffering from a physical disability or handicap, the elector may have two members of the election board who are of opposite political parties deliver a ballot from the polling place to a convenient place within the building. After the ballot has been delivered, the disabled or handicapped elector shall cast the ballot in the general presence of both officials. After returning to the polling place with the voted ballot, the election officials shall immediately give the name and address of the elector

to the poll clerks who shall enter the information in the pollbooks. The voted ballot must then immediately be placed in the ballot box by both election officials. In order to comply with the reasonable accessibility requirement of subsection 2 of section 16.1-04-02, if a polling place cannot be made accessible, an alternate accessible site within reasonable proximity may also be provided for voting. The board of county commissioners shall publicize the location of alternate polling places if provided. Parking facilities at polling places must be accessible to the elderly and the handicapped and must be clearly marked.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 257

HOUSE BILL NO. 1387
(Moore, Schneider)

ELECTRONIC MACHINE VOTE CANVAS

AN ACT to amend and reenact section 16.1-15-09 of the North Dakota Century Code, relating to canvassing of votes on electronic counting machines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-15-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines shall be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment which has an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment shall also be equipped with an element which generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records shall be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy shall be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots shall be clearly labeled duplicate, shall bear a serial number which shall be recorded on the damaged or defective ballot, and shall be wrapped and delivered with other ballots to the county judge.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 258

HOUSE BILL NO. 1343
(Kretschmar)

ELECTION RECOUNTS

AN ACT to amend and reenact sections 16.1-15-23, 16.1-15-28, 16.1-15-40, 16.1-15-44, and 16.1-16-01 of the North Dakota Century Code, relating to election recounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-15-23 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-23. Notice of nomination given candidate for county office by county auditor - Publication of findings of canvassing board. Upon the completion of the canvass of the returns of a primary election by the county canvassing board, the county auditor shall mail or deliver in person to each candidate nominated for any county office a certificate of his nomination and notice that his name will be placed on the official ballot. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to ~~subsection 1 of~~ section 16.1-16-01, the county auditor shall not prepare or deliver the certificate of nomination until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. Nomination notices for other than county offices shall be given by the secretary of state pursuant to section 16.1-15-40. The county auditor shall cause a copy of the findings of the canvassing board to be published in the official newspaper of the county.

SECTION 2. AMENDMENT. Section 16.1-15-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-28. Certificate of election for officers elected in county at general election. Immediately after the canvass of the general election returns by the county canvassing board, the county auditor shall prepare a certificate of election for each of the persons having the highest number of votes for county offices, and shall deliver the certificate to the person entitled thereto on his making

application to the county auditor therefor. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to subsection 1 of section 16.1-16-01, the county auditor shall not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later.

SECTION 3. AMENDMENT. Section 16.1-15-40 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-40. Statement prepared by state canvassing board for primary election - Contents - Signing - Candidate notified of nomination. The state canvassing board shall prepare the statement required by subsections 1, 2, and 3 of section 16.1-15-21 for primary elections. The certificate shall be signed by the members of the board and filed in the office of the secretary of state. Upon completion of the canvass, the secretary of state shall mail to each candidate nominated a notice of his nomination stating that his name will be placed upon the official ballot to be voted for at the ensuing general election. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to subsection 1 of section 16.1-16-01, the secretary of state shall not prepare or deliver the notice of nomination until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. The secretary of state shall file a copy of the findings of the board and shall publish those findings in a newspaper printed in Burleigh County.

SECTION 4. AMENDMENT. Section 16.1-15-44 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-44. Secretary of state to record statement of general or special election, prepare certificates of election, publish statement. After receiving each certified statement and determination made by the state canvassing board, the secretary of state shall record the same in his office and shall prepare and transmit to each of the persons declared to be elected, a certificate of election as provided in this chapter. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to subsection 1 of section 16.1-16-01, the secretary of state shall not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. The secretary of state shall cause a copy of the certified statement and determination to be published in the official newspaper of Burleigh County.

*** SECTION 5. AMENDMENT.** Section 16.1-16-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 16.1-16-01 was also amended by section 2 of House Bill No. 1056, chapter 259.

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or county office, or for the approval or disapproval of any measure or question submitted to the qualified electors of this state or one of its counties shall be conducted as follows:

1. A recount must be conducted when:
 - a. Any person failed to be nominated in a primary election by ~~less than~~ one percent or less of the highest vote cast for a candidate of his party for the office sought.
 - b. Any person failed to be elected in a general or special election by ~~less than~~ one-half of one percent or less of the highest vote cast for a candidate for that office.
 - c. A question or measure submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
 - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate of the person's party for the office sought.
 - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections, and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
 - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
 - b. The county auditor when the recount is for a county office.

4. Within ~~three~~ four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date of the recounts within seven days after giving notice that the auditor must conduct the recount. Within ~~three~~ four days after the canvass of votes by the county canvassing board, the county auditor shall fix the date for recounts limited to his county. The date ~~shall~~ must be within eight days after the canvass. In all recount proceedings, the county auditor shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.
- 3- 5. Recounts ~~shall~~ must be conducted by the county auditor who may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether or not the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, he the county auditor shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.
- 4- 6. The persons entitled to participate at the recount are:
- a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board shall be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person shall serve on the recount board if he would not be qualified to serve on the election board

pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the county commission who would be qualified to serve on the board shall appoint disinterested qualified electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor shall take appropriate steps to safeguard the ballots.

- 5- 7. The county auditor shall certify the results of the recount no later than three days after the recount. The recount result shall become the official result of the election in the county. The county auditor shall prepare a corrected abstract of the votes. In a recount limited to the county, if the corrected abstract shows no change in the outcome of the election, no further action shall be taken. If the corrected abstract changes the outcome of the election, the county auditor shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the qualified electors.
- 6- 8. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.
- 7- 9. The expenses incurred in a recount of a county election shall be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a congressional, state, or legislative election shall be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.
- 8- 10. The results of any recount of votes cast in an election of a member of the legislative assembly shall be admissible in either house of the legislative assembly, or before a committee of either house, as evidence to aid in the determination of an election contest pending in that house.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 259

HOUSE BILL NO. 1056
(Legislative Council)

(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE BRANCH CHANGES

AN ACT to amend and reenact sections 16.1-15-30, 16.1-16-01, 16.1-16-04, 16.1-16-06, 16.1-16-09, 16.1-16-10, 23-06-13, 23-20.2-09, 54-03-01.5, 54-03-02, 54-03-07, 54-03.1-02, the new section to chapter 54-07 as created by section 2 of House Bill No. 1057 as approved by the fiftieth legislative assembly, and 61-16.1-16 of the North Dakota Century Code, relating to legislative elections and contests, legislative actions, legislative apportionment requirements, legislative enactments, and legislative meetings; to repeal sections 16.1-16-11, 16.1-16-12, 16.1-16-13, 16.1-16-14, 16.1-16-15, 16.1-16-16, and 16.1-16-17 of the North Dakota Century Code, relating to legislative election contests; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-15-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-30. Determining tie vote for legislative assembly. If the requisite number of persons are not elected to the state senate or house of representatives because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county auditor, if the legislative district in question is within one county, shall, ~~by certified mail,~~ notify the secretary of state. ~~The secretary of state shall notify the persons with equal and the highest number of votes to appear in his the office of the secretary of state at a time fixed by him the secretary of state.~~ The time fixed shall not be more than five days from the date the tie is determined by the county auditor. On the date fixed, the persons notified to appear shall publicly decide by the toss of a coin flip which of them shall be declared elected, and ~~the county auditor shall certify the results to~~ the secretary of state ~~who~~ shall prepare and deliver to the person elected a certificate of election as provided in this chapter. If the

legislative district in question is within the boundaries of more than one county, the county auditor of the county which cast the greater number of votes for the office of governor at the last election at which a governor was elected shall proceed in accordance with this section.

* SECTION 2. AMENDMENT. Section 16.1-16-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or county office, or for the approval or disapproval of any measure or question submitted to the qualified electors of this state or one of its counties shall be conducted as follows:

1. A recount must be conducted when:
 - a. Any person failed to be nominated in a primary election by less than one percent of the highest vote cast for a candidate of his party for the office sought.
 - b. Any person failed to be elected in a general or special election by less than one-half of one percent of the highest vote cast for a candidate for that office.
 - c. A question or measure submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. Within three days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1. The secretary of state shall fix the date of the recounts within seven days after giving notice that the auditor must conduct the recount. Within three days after the canvass of votes by the county canvassing board, the county auditor shall fix the date for recounts limited to his county. The date shall be within eight days after the canvass. In all recount proceedings, the county auditor shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.
3. Recounts shall be conducted by the county auditor who may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether or not the ballots were counted at the

* NOTE: Section 16.1-16-01 was also amended by section 5 of House Bill No. 1343, chapter 258.

precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, he shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.

4. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board shall be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person shall serve on the recount board if he would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county ~~commissioners~~ commissioners who would be qualified to serve on the board shall appoint disinterested qualified electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor shall take appropriate steps to safeguard the ballots.

5. The county auditor shall certify the results of the recount no later than three days after the recount. The recount result shall become the official result of the election in the county. The county auditor shall prepare a corrected abstract of the votes. In a recount limited to the county, if the corrected abstract shows no change in the outcome of the election, no further action shall be taken. If the corrected abstract changes the outcome of

the election, the county auditor shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the qualified electors.

6. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.
7. The expenses incurred in a recount of a county election shall be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a congressional, state, or legislative election shall be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors.
8. The results of any recount of votes cast in an election of a member of the legislative assembly shall be admissible in either house of the legislative assembly, or before a committee of either house, as evidence to aid in the determination of an election contest pending in that house.

SECTION 3. AMENDMENT. Section 16.1-16-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-04. Time for commencement of action. Any action to contest an election shall be commenced and the complaint shall be filed in the district court of the contestee's county of residence within five days after final certification of a recount by the appropriate canvassing board, or within fourteen days after the final certification by the appropriate canvassing board if no recount is to be conducted, ~~except as provided in section 16-1-16-10.~~ However, if the grounds for the action is the illegal payment of money or other valuable thing subsequent to the filing of any statement of expenses required by this title, or if the contestee does not or cannot meet the qualifications to hold the office as required by law, the action may be commenced at any time. The contestee shall serve and file ~~his~~ an answer within fourteen days after service of the contest summons and complaint.

SECTION 4. AMENDMENT. Section 16.1-16-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-06. Election contest to be tried as civil action - Precedence on court calendar. ~~Unless otherwise specifically provided in this chapter, election~~ Election contest actions shall be tried as civil actions to the court without a jury. The district court shall set the hearing on the contest action not more than ten days after the filing of the contest answer. Election contests shall take precedence over regular court business so elections are determined as soon as practicable. The district court judge shall order a special term of the court if no term is in progress when the election contest complaint is filed.

SECTION 5. AMENDMENT. Section 16.1-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-09. Appeal of election contest judgment. An appeal to the supreme court of the judgment in an election contest action may be had by filing a notice of appeal with the clerk of the trial court within ten days of the date of the service of notice of entry of the judgment. ~~Unless otherwise specifically provided by this chapter, appeals~~ Appeals of election contest actions shall be conducted in the manner provided by law ~~or rule for civil appeals from the district court~~ the North Dakota Rules of Appellate Procedure. Election contest appeals shall take precedence over regular court business so election results can be determined as soon as practicable. An appeal may be brought on for hearing before the supreme court at any time upon ten days' notice by either party and shall be determined in a summary manner.

SECTION 6. AMENDMENT. Section 16.1-16-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-10. Legislative contest of election. Legislative election contests shall ~~must~~ be determined pursuant to ~~sections 16-1-16-10 through 16-1-16-17.~~ Any person intending to contest, before either house of the legislative assembly, the election of a member of the legislative assembly shall serve on that member a statement of contest, which shall specify the grounds for the contest. The statement shall be served on the member and a copy filed with the secretary of state within five days after a recount is completed, and within ten days after the canvass is completed if no recount is to be conducted in court as provided in this chapter for other contests. No legislative election may be contested before either house of the legislative assembly.

SECTION 7. AMENDMENT. Section 23-06-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-13. Dissection - When allowed. The dead body of a human being may be dissected:

1. When authorized by positive enactment of the legislative assembly of this state;

- 2- When the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest;
- 3- 2. When the husband, wife, or one of the next of kin of a deceased person, charged by law with the duty of burial, authorizes such dissection for the purposes of ascertaining the cause of death; or
- 4- 3. When permission has been given therefor by deceased.

SECTION 8. AMENDMENT. Section 23-20.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.2-09. Deposit of radioactive waste material - Legislative approval required. No person, firm, corporation, or other legal entity may deposit, or cause or permit to be deposited in this state, any radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. Radioactive waste material means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides.

SECTION 9. AMENDMENT. Section 54-03-01.5 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-01.5. Legislative apportionment requirements. A legislative apportionment plan based on any census taken after 1979 shall meet the following requirements:

1. The senate shall consist of ~~forty-seven~~ forty to ~~fifty-three~~ fifty-four members and the house shall consist of ~~ninety-four~~ eighty to one hundred ~~six~~ eight members.
2. Except as provided in subsection 3, one senator and two representatives shall be apportioned to each senatorial district. Representatives may be elected at large or from subdistricts. ~~Subdistricts are authorized only upon two-thirds vote by the elected members of the senate and house when adopting an apportionment plan.~~
3. Multimember senate districts providing for two senators and four representatives are authorized only when a proposed single member senatorial district includes a federal facility or federal installation, containing over two-thirds of the population of the proposed single member senatorial district. ~~No subdistricts may be included in any multimember senate district.~~

4. Legislative districts and subdistricts shall be compact and of contiguous territory ~~except where impracticable in multimember senatorial districts.~~
5. Legislative districts shall be as nearly equal in population as is practicable. Population deviation from district to district shall be kept at a minimum. The total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

SECTION 10. AMENDMENT. Section 54-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-02. When legislative assembly meets. The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes and shall thereafter recess until twelve noon on the first Tuesday after the ~~first Monday third day~~ in January of the next year, ~~provided, however, that if the first Tuesday after the first Monday falls on January second, the legislative assembly shall reconvene at or until twelve noon on a date to be selected by the legislative council but not earlier than January second nor later than January eleventh.~~

SECTION 11. AMENDMENT. Section 54-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-07. ~~Election contest Qualifications of members - Each house to judge.~~ If the ~~right~~ qualifications of any ~~person to a seat in member of~~ either house of the legislative assembly is ~~contested~~ are challenged, the right of ~~such person that member~~ to a seat shall be determined by the house in which ~~he that person~~ that person claims a seat as a member, ~~except an election contest must be determined in accordance with chapter 16.1-16.~~ Each house of the legislative assembly, in all cases, shall be the sole judge of the qualifications of its members.

SECTION 12. AMENDMENT. Section 54-03.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03.1-02. Time and place of meeting - Who must attend. In each even-numbered year on the first Tuesday after the first Monday in the month of December, all persons elected at the previous November general election as members of the succeeding legislative session, and members of the senate whose terms do not expire ~~during the following session of the legislative assembly until the first day of December following the next November general election,~~ shall meet in the state capitol in the city of Bismarck, or at such other place as may be designated, at the hour of nine a.m. for the purpose of conducting an organizational session. The legislative council shall

call the organizational session and make such arrangements as may be necessary for its operation.

SECTION 13. AMENDMENT. The new section to chapter 54-07 of the North Dakota Century Code as created by House Bill No. 1057, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

Governor to file bills with secretary of state. The governor shall cause each bill passed by the legislative assembly and not vetoed by the governor to be filed with the secretary of state within three five days, Sundays excepted, after the bill has been presented to the governor unless the legislative assembly by its adjournment prevents its return in which case the governor shall cause the bill to be filed within fifteen days after the adjournment.

SECTION 14. AMENDMENT. Section 61-16.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-16. Revenue bonds. Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of ten million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the water resource board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds, and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. ~~Upon specific authorization by the legislative assembly and in accordance with this section, a district may issue revenue bonds in excess of an aggregate total of ten million dollars.~~ Revenue bonds shall not be a general obligation of any county, and shall not be secured by property taxes.

SECTION 15. REPEAL. Sections 16.1-16-11, 16.1-16-12, 16.1-16-13, 16.1-16-14, 16.1-16-15, 16.1-16-16, and 16.1-16-17 of the North Dakota Century Code are hereby repealed.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987

Filed March 30, 1987

FIRES

CHAPTER 260

SENATE BILL NO. 2415
(Nelson)

LPG FURNACES

AN ACT to create and enact a new section to chapter 18-09 of the North Dakota Century Code, relating to the installation of liquefied petroleum gas furnaces or other appliances in residential or commercial buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 18-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Liquefied petroleum gas furnace or other appliance permitted in residential or commercial building. No state agency may by rule, resolution, or ordinance prohibit the installation, in the basement of any residential or commercial building, of a furnace or other appliance that uses liquefied petroleum gas.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 261

SENATE BILL NO. 2497
(Stenehjem, Ingstad)

FIRE PROTECTION DISTRICT IMMUNITY

AN ACT to create and enact a new section to chapter 18-10 of the North Dakota Century Code, relating to civil immunity for fire protection districts and district personnel; and to amend and reenact subsection 3 of section 32-12.1-03 of the North Dakota Century Code, relating to civil immunity for political subdivisions and subdivision employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 18-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Rural fire protection district - Civil immunity. No rural fire protection district, nor any personnel of the district, acting within the scope of its authority is liable for any claim resulting from the failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this section does not provide immunity for damages resulting from acts of gross negligence.

SECTION 2. AMENDMENT. Subsection 3 of section 32-12.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A political subdivision shall not be liable for any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved be abused. Specifically, a political subdivision or an employee

thereof shall not be liable for any claim which results from:

- a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
- b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
- d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subsection does not provide immunity for damages resulting from acts of gross negligence.

Nothing contained in this subsection shall be construed to limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 262

HOUSE BILL NO. 1112
(Committee on Political Subdivisions)
(At the request of the State Auditor)

FIREMEN'S RELIEF ASSOCIATION AUDITS

AN ACT to amend and reenact sections 18-11-22 and 54-10-22 of the North Dakota Century Code, relating to the state auditor's examination of firemen's relief associations and the responsibility for expenses incurred from an audit; and to repeal sections 58-02-04 and 58-02-05 of the North Dakota Century Code, relating to the notification to the state auditor of new townships and avoiding duplication of any township names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-11-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-11-22. State auditor to examine books Examination of relief association records - Report of unauthorized spending to governor - Duty of governor. The state auditor biennially shall examine the books and accounts of the secretary-treasurer of each firemen's relief association receiving funds under the provisions of this chapter must be examined pursuant to section 54-10-14. If he finds the audit report discloses that the money, or any part of it, has been or is being expended for unauthorized purposes, he the state auditor shall report the facts to the governor. Thereupon, the governor shall direct the state auditor to refuse to issue any warrants for the benefit of the fire department or relief association of the municipality in which such association is organized until it shall be made to appear to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand. Each firemen's relief association shall pay into the state treasury fees for such biennial examinations as provided by section 54-10-14 for the examination of the books and accounts of political subdivisions.

SECTION 2. AMENDMENT. Section 54-10-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-22. Public officers to aid state auditor - Auditor's authority on investigation. The officers and employees of all departments, institutions, boards, commissions, and political subdivisions, subject to examination by the state auditor, must afford all reasonable facilities for the investigation provided for in this title, and must make returns and exhibits to the auditor under oath in such form and in such manner as he may prescribe. The auditor shall have full power and authority to audit any books, papers, accounts, bills, vouchers, and other documents, or property of any and all departments, boards, commissions, political subdivisions, and financial institutions subject to his audit. He The auditor shall have authority to audit under oath any or all trustees, managers, officers, employees, or agents of any such departments, boards, commissions, or political subdivisions. When necessary, the auditor shall employ stenographers or clerical help, the expense incurred ~~therefor~~ to be collected by ~~him~~ the auditor from the ~~county~~ respective department, institution, board, commission, or political subdivision.

SECTION 3. REPEAL. Sections 58-02-04 and 58-02-05 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

FOOD, DRUGS, OILS, AND COMPOUNDS

CHAPTER 263

SENATE BILL NO. 2278
(Committee on State and Federal Government)
(At the request of the Governor)

DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES

AN ACT to consolidate the state department of health and the state laboratories department into the state department of health and consolidated laboratories; and to amend and reenact sections 19-01-01, 19-01-02, 19-01-02.1, 19-01-07, 19-01-18, subsection 4 of section 19-02.1-05, sections 19-02.1-20, 19-02.1-21, subsection 1 of section 19-03.1-01.1, sections 19-03.1-37, 19-10-21, subsection 9 of section 19-13.1-02, sections 19-13.1-09, 19-13.1-11, 19-13.1-12, subsection 4 of section 19-17-04, sections 19-18-02, 19-18-04, 19-18-07, 19-20.1-08, 19-20.1-17, subsection 3 of section 19-21-01, sections 23-01-01, 23-01-07, 23-01-09, 23-09-01, 43-43-01, and 61-28.1-07 of the North Dakota Century Code, relating to consolidation of the state laboratories and the state department of health; and to repeal sections 19-01-03, 19-01-04, 19-01-06, and 19-01-08 of the North Dakota Century Code, relating to the state laboratories department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. State department of health and consolidated laboratories to replace state department of health. Wherever the terms "North Dakota state department of health", "state department of health", "department of health", or "health department" appear in this code, the term "state department of health and consolidated laboratories" must be substituted therefor.

Wherever the terms "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health and consolidated laboratories" must be substituted therefor unless otherwise provided herein.

Wherever the terms "state food commissioner and chemist" and "commissioner" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18 of the North Dakota Century Code, the term "state department of health and consolidated

laboratories" must be substituted therefor unless otherwise provided herein.

SECTION 2. AMENDMENT. Section 19-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-01. Definitions of terms used in title. In this title, unless the context or subject matter otherwise requires:

1. "Commission" shall mean the state laboratories commission.
2. "Department" shall mean means the state laboratories department state department of health and consolidated laboratories.
- 3- 2. "Person" shall import includes both the singular and the plural, as the case demands, and shall include includes individuals, partnerships, corporations, companies, and associations, or two or more individuals having a joint or common interest.

SECTION 3. AMENDMENT. Section 19-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-02. State laboratories department - State laboratories commission Consolidated laboratories branch - Members, duties, meetings. The state laboratories department consolidated laboratories branch shall be maintained as one of the departments of the state branches of the state department of health and consolidated laboratories. The management, control, and supervision of such department branch shall be placed in the state laboratories commission, which shall be composed of the governor, who shall act as chairman thereof, the state treasurer, and the attorney general. It shall meet whenever necessary, and at least once a month delegated by the state health officer to a laboratory director. The commission department may adopt rules and regulations pursuant to under chapter 28-32 as may be necessary for the full and complete enforcement of the regulatory laws of the state under its jurisdiction. The commission shall also establish, and may alter as the need arises, a fee schedule for private samples that are submitted to the department for laboratory analysis.

SECTION 4. AMENDMENT. Section 19-01-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-02.1. Legislative intent. It is the intent of the legislative assembly that the department serve the public in the capacity of a consumer affairs office provide consumer protection services to the public by means of laboratory sampling, laboratory testing, on-site inspecting, and public information services within its jurisdiction.

SECTION 5. AMENDMENT. Section 19-01-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-07. Fees - Disposition. All revenues received and fees and charges collected under the provisions of this title shall be properly accounted for daily by the ~~assistant director and employees to the director of the department, and by the assistant director~~ recorded and entered upon the ~~assistant director's~~ books by counties from which the fees and charges are received. The ~~director~~ department shall forward all moneys so collected to the state treasurer monthly, and the treasurer shall place the same in the general fund of the state. Funds may be accepted from cities, counties, states, federal agencies, and private organizations for contract services of analytical and inspection work. Such funds shall be remitted by the department to the state treasurer and deposited in a special account in the state treasury, designated the "state consolidated laboratories contract servicers fund" to be used exclusively to carry out the intent and purposes of this section. Such funds are retained by the department for payment of expenditures incurred in rendering such services and are hereby appropriated to the department to be disbursed by the department in accordance with the intent and purposes of this section. Funds in excess of fifty thousand dollars received and disbursed during any biennial period pursuant to this section shall require emergency commission approval.

SECTION 6. AMENDMENT. Section 19-01-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-18. Duties as to weights and measures. When requested so to do by the public service commission, the ~~director of the department,~~ when it is possible and practicable to do so, shall ~~direct one or more of the employees of the department to~~ perform such duties as may be required relating to the inspection and licensing of weights and measures. Each employee of the department, when engaged in the performance of such duties, shall have the same powers and shall charge and collect the same fees for the services the employee may perform as are provided in the case of an inspector in chapter 64-02. All fees, licenses, and other charges collected by the department in performing such additional duties shall be considered as collections made by the department to be accounted for and disposed of as provided in this chapter.

SECTION 7. AMENDMENT. Subsection 4 of section 19-02.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Whenever ~~the state laboratories director or any of the state laboratories director's~~ an authorized agents agent of the department shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit, or other perishable

articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the state laboratories director or the state laboratories director's department's authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

SECTION 8. AMENDMENT. Section 19-02.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-20. Regulations - Hearings. The authority to ~~promulgate regulations~~ adopt rules for the efficient enforcement of this chapter is hereby vested in the department. The department is hereby authorized to make the ~~regulations promulgated~~ rules adopted under this chapter conform, insofar as practicable, with those ~~promulgated~~ adopted under the federal act. Regulations Rules shall conform and be consistent with the provisions of the Uniform Controlled Substances Act. When adopting any rules under this chapter, the department shall follow the procedures under chapter 28-32.

Hearings ~~authorized or required by this chapter shall be conducted by the state laboratories director or such officer, agent, or employee as the state laboratories director may designate for the purpose. When promulgating any regulations contemplated by section 19-02.1-08, subsection 10 of section 19-02.1-10, section 19-02.1-11, subsections 4, 7, 8, 9, 14, and 17 of section 19-02.1-14, subsection 3 of section 19-02.1-15 or subsection 2 of section 19-02.1-19, the department shall follow the procedures provided for in chapter 28-32.~~

SECTION 9. AMENDMENT. Section 19-02.1-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-21. Inspections - Examinations. The ~~state laboratories director or the state laboratories director's~~ duly authorized agent ~~department~~ has free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose of inspecting such factory, warehouse, establishment, or vehicle to determine if this chapter is being violated and to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample.

The ~~state laboratories director~~ department shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

Inspections of slaughterhouses, meatpacking, and meat processing plants where cattle, swine, sheep, goats, horses, or other equines are slaughtered for human food or where the carcass or the parts thereof, meat, or meat food products are salted, canned, packed, smoked, cured, rendered, or otherwise processed or prepared for human food, may not be performed under this chapter if the slaughterhouses, meatpacking, or meat processing plants are inspected under the North Dakota Meat Inspection Act, or the Federal Meat Inspection Act, as amended [34 Stat. 1260-65; 21 U.S.C. 71-91].

SECTION 10. AMENDMENT. Subsection 1 of section 19-03.1-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the state laboratories department consolidated laboratories branch of the department of health and consolidated laboratories or the director's designee, the chairman chairperson of the state board of medical examiners or the chairman's chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, shall be the chairman chairperson of the board.

SECTION 11. AMENDMENT. Section 19-03.1-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-37. Burden of proof - Liabilities.

1. It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.
2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.
3. No liability is imposed by this chapter upon any authorized state, county, or municipal officer, engaged in the lawful performance of their duties.
4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state

toxicologist or the state laboratories director of the consolidated laboratories branch of the department of health and consolidated laboratories shall be accepted as prima facie evidence of the results of the analytical findings.

5. Notwithstanding any statute or rule to the contrary, the defendant may subpoena the state toxicologist or the state laboratories director of the consolidated laboratory services branch of the department of health and consolidated laboratories or any employee of either to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

SECTION 12. AMENDMENT. Section 19-10-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-21. Bond may be required of dealer in petroleum products. The ~~director of the department, if the director deems it necessary,~~ may require any person importing gasoline, kerosene, tractor fuel, heating oil, or diesel fuel for sale or consignment within this state or in possession of any such petroleum products with intent to sell the same, to deposit with the department a surety bond payable to the state of North Dakota in the penal sum of five hundred dollars, or in twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of receipts of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The bond shall be approved as to its sufficiency by the department. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

SECTION 13. AMENDMENT. Subsection 9 of section 19-13.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Official sample" means any sample of feed taken by the state laboratories director or his agent department and designated as "official" by the department.

SECTION 14. AMENDMENT. Section 19-13.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-09. Inspection, sampling, analysis. It shall be the duty of the state laboratories director, who may act through the director's authorized agent, department to sample, inspect, make analyses of, and test commercial feeds and customer-formula feeds distributed within this state at such time and place to such an extent as the director department may deem necessary to determine whether such

feeds are in compliance with the provisions of this chapter. The ~~state laboratories director, individually or through the director's agent,~~ department is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution. The methods of sampling and analysis shall be those adopted by the department from sources such as the journal of the association of official agricultural chemists.

The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in subsection 9 of section 19-13.1-02 and obtained and analyzed as provided for in this section. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the department to the distributor and the purchaser. Upon request within thirty days the department shall furnish to the distributor a portion of the sample concerned.

SECTION 15. AMENDMENT. Section 19-13.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-11. Detained commercial feeds. When the ~~state laboratories director or the director's authorized agent~~ department has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, the ~~director~~ department may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or the court. The department shall release the lot of commercial feed so withdrawn when said provisions and ~~regulations~~ rules have been complied with. If compliance is not obtained within thirty days, the department may begin, or upon request of the distributor shall begin, proceedings for condemnation.

Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the ~~state laboratories director~~ department to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

SECTION 16. AMENDMENT. Section 19-13.1-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-12. Penalties. Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent the state laboratories director or the state laboratories director's duly authorized agent in performance of the state laboratories director's duty department from performing its duties in connection with the provisions of this chapter, shall be guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the state laboratories director of the consolidated laboratories branch of the department of health and consolidated laboratories shall be accepted as prima facie evidence of the composition.

Nothing in this chapter shall be construed as requiring the state laboratories director or the state laboratories director's representative department to seek prosecution or the institution of seizure proceedings based on minor violations of the chapter when the state laboratories director believes department deems that the public interest will be best served by a suitable notice of warning in writing.

It shall be the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present the distributor's view to the department.

The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule ~~or regulation~~ promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for Burleigh County for new trial of the issues bearing upon such act, order, or ruling, and upon such trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

SECTION 17. AMENDMENT. Subsection 4 of section 19-17-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. For the purpose of this chapter, the ~~commissioner, or such officers or employees under the commissioner's supervision~~

as the commissioner may designate, department is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling.

SECTION 18. AMENDMENT. Section 19-18-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-02. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" shall mean:
 - a. In the case of an economic poison other than a plant regulator, defoliant, or desiccant, any ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.
 - b. In the case of a plant regulator, any ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.
 - c. In the case of a defoliant, any ingredient which will cause the leaves or foliage to drop from a plant.
 - d. In the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue.
2. "Adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.
3. "Antidote" shall mean the most practical immediate treatment in case of poisoning and includes first aid treatment.
4. "~~Commissioner~~" shall mean the state food commissioner and chemist.
- 5- "Defoliant" means any substance intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

- 6- 5. "Desiccant" means any substance intended to artificially accelerate the drying of plant tissues.
- 7- 6. "Device" shall mean any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or weeds, or such other pests as may be designated by the ~~commissioner~~ department, but not including equipment used for the application of economic poisons when sold separately therefrom or rodent traps.
- 8- 7. "Economic poison" shall mean any substance intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, snails, slugs, fungi, weeds, or other forms of plant or animal life or viruses, bacteria, or other micro-organisms; and any substance intended for use as a plant regulator, defoliant, or desiccant.
- 9- 8. "Fungi" shall mean all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.
- 10- 9. "Fungicide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
- 11- 10. "Herbicide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
- 12- 11. "Inert ingredient" shall mean an ingredient which is not an active ingredient.
- 13- 12. "Ingredient statement" shall mean:
- a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or
 - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of the inert ingredients, if there be, in the economic poison, except subdivision a shall apply if the preparation is highly toxic to man, determined as provided in section 19-18-05, and in addition to subsections 1 and 2 of section 19-18-05. In case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

- ~~14-~~ 13. "Insect" shall mean any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
- ~~15-~~ 14. "Insecticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.
- ~~16-~~ 15. "Label" shall mean the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.
- ~~17-~~ 16. "Labeling" shall mean all labels and other written, printed, or graphic matter;
- a. Upon the economic poison or device or any of its containers or wrappers;
 - b. Accompanying the economic poison or device at any time;
 - c. To which reference is made on the label or in literature accompanying the economic poison or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of economic poisons.
- ~~18-~~ 17. "Misbranded" shall apply:
- a. To any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - b. To any economic poison:
 - (1) If it is an imitation of or is offered for sale under the name of another economic poison;
 - (2) If its labeling bears any reference to registration under this chapter;

- (3) If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
- (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
- (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;
- (6) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or
- (8) If a plant regulator, defoliant, or desiccant when used as directed shall be injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that physical or physiological effect on plants or parts thereof shall not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

~~19-~~ 18. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.

~~20-~~ 19. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.

- ~~21-~~ 20. "Person" shall mean any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.
- ~~21-1-~~ 21. "Pest" shall mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
22. "Plant regulator" means any substance intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.
23. "Registrant" shall mean the person registering any economic poison pursuant to the provisions of this chapter.
24. "Restricted use pesticides" means any pesticide which the department has found and determined under the provisions of this chapter to be injurious to persons, pollinating insects, animals, crops, or lands in addition to the pests it is intended to repel, destroy, control, or mitigate.
25. "Rodenticide" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the ~~commissioner~~ department shall declare to be a pest.
26. "Snails or slugs" include all harmful agricultural mollusks.
27. "Weed" shall mean any plant which grows where not wanted.

SECTION 19. AMENDMENT. Section 19-18-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any economic poison for use within this state shall file annually with the ~~commissioner~~ department an application for registration of such economic poison. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand, if any, of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of subsection 13 of section 19-18-02, and accompanying each

registration application there shall be filed with the ~~commissioner~~ department a label of each product so registered. If the ~~commissioner~~ department finds that the application conforms to law, the ~~commissioner~~ department shall issue to the applicant a certificate of registration of the product. If after public hearing before the ~~commission~~ and the ~~commissioner~~ department the application is denied, the product shall not be offered for sale.

3. Be accompanied by an inspection fee of twenty-five dollars for each product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section shall be construed as applying to retail dealers selling economic poisons. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee shall be imposed if the license or certificate of registration is not applied for on or before January first of each year, within the same month such economic poisons are first manufactured or sold within this state.

SECTION 20. AMENDMENT. Section 19-18-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 shall not apply to:

1. Any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier, upon request, shall permit the ~~commissioner~~ or the ~~commissioner's designated agent~~ department to copy all records showing the transactions in and movement of the articles.
2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of an economic poison for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons; or

- b. By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. If a written permit has been obtained from the ~~commissioner~~ department, economic poisons may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported all the provisions of this chapter shall apply.

SECTION 21. AMENDMENT. Section 19-20.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-08. Inspection, sampling, analysis. It shall be the duty of the ~~state laboratories director, who may act through the director's authorized agent,~~ department to sample, inspect, make analyses of, and test commercial fertilizers and soil amendments, auxiliary soil and plant substance distributed within this state at time and place and to such an extent as the ~~director~~ department may deem necessary to determine whether such commercial fertilizers or soil amendments are in compliance with the provisions of this chapter. The ~~state laboratories director individually or through the director's agent,~~ department is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers or soil amendments, auxiliary soil and plant substance subject to the provisions of this chapter and the rules and regulations pertaining thereto. The methods of analysis and sampling shall be those adopted by the department from sources such as the A.O.A.C. journal.

The department, in determining for administrative purposes whether any commercial fertilizer or soil amendment, auxiliary soil and plant substance is deficient, shall be guided solely by the official sample obtained and analyzed by the department. The results of official analysis of any commercial fertilizer or soil amendment, auxiliary soil and plant substance which has been found to be subject to penalty or other legal action shall be forwarded by the department to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the department, the report shall become official. Upon request the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

SECTION 22. AMENDMENT. Section 19-20.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-20.1-17. Violations - Penalty.

1. If it shall appear from the examination of any commercial fertilizer or soil amendment, auxiliary soil and plant substance that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the department shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom said sample was taken. Any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the department. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the state laboratories director department may certify the facts to the proper prosecuting attorney.
2. Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said state laboratories director or the state laboratories director's duly authorized agent the department in the performance of their its duty in connection with the provisions of this chapter, shall be guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizers or soil amendments, auxiliary soil and plant substance, a certified copy of the official analysis signed by the state laboratories director of the consolidated laboratories branch of the department shall be accepted as prima facie evidence of the composition.
3. Nothing in this chapter shall be construed as requiring the state laboratories director or the director's representative department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when the director believes that the public interests will be best served by a suitable notice of warning in writing.
4. It shall be the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
5. The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

SECTION 23. AMENDMENT. Subsection 3 of section 19-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Department" means the state laboratories department state department of health and consolidated laboratories.

SECTION 24. AMENDMENT. Section 23-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-01. State department of health and consolidated laboratories - Officers. The state department of health and consolidated laboratories shall consist of a health council, a state health officer, a laboratories branch director, section chiefs, directors of divisions and other employees of the department.

SECTION 25. AMENDMENT. Section 23-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-07. Working divisions Structure of department. The state department of health may establish the following divisions of health: and consolidated laboratory services shall contain a consolidated laboratories branch and a health services branch.

- 1- Division of vital statistics-
- 2- Division of preventable disease-
- 3- Division of sanitary engineering-
- 4- Division of public health laboratories with such laboratories and branches thereof at such places as the health council may deem necessary-
- 5- Division of maternal and child hygiene-
- 6- Division of public health nursing-
- 7- Division of administration-
- 8- Division of health education-
- 9- Division of oral health-
- 10- Such other divisions as may be deemed necessary from time to time by the council-

SECTION 26. AMENDMENT. Section 23-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-09. Duties of director of public health consolidated laboratories division branch. The director of the division of public health consolidated laboratories branch of the state department of health and consolidated laboratories shall include:

1. Make bacteriological examination of bodily secretions and excretions and of waters and foods.
2. Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.
3. Make all analyses and preparations which he is required to make, and furnish the results thereof, as expeditiously and promptly as possible.
4. Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
5. From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.
6. Be empowered to establish by regulation a schedule of reasonable fees which it may charge for laboratory analysis. No charge shall, however, be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.

* SECTION 27. AMENDMENT. Section 23-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

- 1- "Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals,
- 2- "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished,
- 3- "Lodginghouse" includes every building or structure, or any part thereof, with accommodations for four or more

* NOTE: Section 23-09-01 was also amended by section 1 of Senate Bill No. 2553, chapter 299.

persons; which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more.

4. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more.
1. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more.
2. "Department" means the state department of health and consolidated laboratories.
3. "Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals.
4. "Lodginghouse" includes every building or structure, or any part thereof, with accommodations for four or more persons, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more.
5. "Proprietor" includes the person in charge of a restaurant, hotel, boardinghouse, or lodginghouse, as the case may be, whether as owner, lessee, manager, or agent.
6. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished.

* SECTION 28. AMENDMENT. Section 43-43-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-43-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Advisory board" means the following or their appointed agents: secretary of state as chairperson, the director of the state laboratories department consolidated laboratories branch of the department of health and

* NOTE: Section 43-43-01 was also amended by section 1 of Senate Bill No. 2459, chapter 535.

consolidated laboratories, the state health officer, and the president of the North Dakota environmental health association. The secretary of state shall appoint one agent of a district or local health unit and one consumer.

2. "Environmental health practitioner" means a person who, by environmental health science education and experience, is qualified and licensed under this chapter to practice environmental health.
3. "Practice of environmental health" means any service or work, such as consultation, investigation, evaluation, surveys, and inspections in the environmental program areas of food, beverage, housing, and lodging sanitation.

SECTION 29. AMENDMENT. Section 61-28.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-28.1-07. Certification of laboratories. No laboratory analysis of water taken from a public water system or any report of such analysis required by this chapter or any ~~regulation rule~~ adopted pursuant to this chapter shall be accepted by the department unless such analysis or report shall be made by the ~~division of public health laboratories of the~~ department or by any other laboratory certified by the department for such purposes. The department shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department may establish to ensure the accuracy of laboratory analyses.

SECTION 30. REPEAL. Sections 19-01-06 and 19-01-08 of the North Dakota Century Code and sections 19-01-03 and 19-01-04 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 264

SENATE BILL NO. 2143
(Committee on Judiciary)
(At the request of the Controlled Substances Board)

CONTROLLED SUBSTANCES SCHEDULES

AN ACT to amend and reenact sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and 19-03.1-13 of the North Dakota Century Code, relating to controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-05. Schedule I.

1. The controlled substances listed in this section are included in schedule I.
2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation: Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Acetyl-Alpha-Methylfentanyl (N-(1-(1-methyl-2-phenethyl)-4-piperidiny)-N-phenylacetamide).
 - ~~a-~~ b. Acetylmethadol.
 - ~~b-~~ c. Allylprodine.

- e- d. Alphacetylmethadol.
- d- e. Alphameprodine.
- e- f. Alphamethadol.
- f- g. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionamide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilide) piperidine) (N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide).
- h. Alpha-Methylthiofentanyl.
- i. Benzylfentanyl.
- g- j. Benzethidine.
- h- k. Betacetylmethadol.
- l. Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide).
- m. Beta-hydroxy 3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide).
- i- n. Betameprodine.
- j- o. Betamethadol.
- k- p. Betaprodine.
- l- q. Clonitazene.
- m- r. Dextromoramide.
- n- s. Diampromide.
- e- t. Diethylthiambutene.
- p- u. DifenoXin.
- q- v. Dimenoxadol.
- r- w. Dimepheptanol.
- s- x. Dimethylthiambutene.
- t- y. Dioxaphetyl butyrate.
- u- z. Dipipanone.
- v- aa. Ethylmethylthiambutene.

- w- bb. Etonitazene.
x- cc. Etoxeridine.
y- dd. Furethidine.
z- ee. Hydroxypethidine.
aa- ff. Ketobemidone.
bb- gg. Levomoramide.
ee- hh. Levophenacymorphan.
dd- ii. Morpheridine.
ee- jj. Noracymethadol.
ff- kk. Norlevorphanol.
gg- ll. Normethadone.
hh- mm. Norpipanone.
nn. 1-Methyl-4-Phenyl-4-Propionoxypiperdine. (MPPP).
oo. 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine. (PEPAP).
pp. Para-fuorofentanyl.
ii- qq. Phenadoxone.
jj- rr. Phenampromide.
kk- ss. Phenomorphan.
ii- tt. Phenoperidine.
mm- uu. Piritramide.
nn- Propheptazine
vv. Proheptazine.
ee- ww. Properidine.
pp- xx. Propiram.
gg- yy. Racemoramide.
rr- zz. Tilidine.

- aaa. 3-methylthiofentanyl (N-(1-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide)
- bbb. Thenylfentanyl.
- ccc. Thiofentanyl (N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide).
- ss- ddd. Trimeperidine.
- 3- Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation
4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
 - b. Acetyldihydrocodeine.
 - c. Benzylmorphine.
 - d. Codeine methylbromide.
 - e. Codeine-N-Oxide.
 - f. Cyprenorphine.
 - g. Desomorphine.
 - h. Dihydromorphine.
 - i. Drotebanol.
 - j. Etorphine (except hydrochloride salt).
 - k. Heroin.
 - l. Hydromorphinol.
 - m. Methyldesorphine.
 - n. Methyldihydromorphine.
 - o. Morphine methylbromide.
 - p. Morphine methylsulfonate.

- q. Morphine-N-Oxide.
- r. Myrophine.
- s. Nicocodeine.
- t. Nicomorphine.
- u. Normorphine.
- v. Pholcodine.
- w. Thebacon.
4. Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted; whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical position and geometric isomers):
- a. 4-bromo-2, 5-dimethoxyamphetamine
dimethoxy-amphetamine. (Some trade or other names:
4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-
bromo-2, 5-DMA.)
- b. 2, 5-dimethoxyamphetamine dimethoxy-amphetamine.
(Some trade or other names: 2,5-dimethoxy-a-
methylphenethylamine; 2, 5-DMA.)
- c. 4-methoxyamphetamine. (Some trade or other names: 4-
methoxy-a-methylphenethylamine;
paramethoxyamphetamine; PMA.)
- d. 5-methoxy-3, 4-methylenedioxyamphetamine
methylenedioxy-amphetamine.
- e. 4-methyl-2, 5-dimethoxyamphetamine. (Some trade and
other names: 4-methyl-2, 5-dimethoxy-a-
methylphenethylamine dimethoxy-a-methylphenethyl-
amine; "DOM"; and "STP".)
- f. 3, 4-methylenedioxy amphetamine.

- g. 3, 4, 5-trimethoxy amphetamine.
- h. Bufotenine. (Some trade and other names: 3-(~~B-Dimethylaminoethyl~~ 3-B Beta Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.)
- i. Diethyltryptamine. (Some trade and other names: N,N-Diethyltryptamine; DET.)
- j. Dimethyltryptamine. (Some trade and other names: DMT.)
- k. Ethyl amine analog of phenylethylidene- (Some trade or other names- N-ethyl-1-phenylethylhexylamine; (1-phenylethylhexyl) ethylamine; N-(1-phenylethylhexyl) ethylamine; ethylhexamine; PEE-)
- l. Hashish-
- m. k. Ibogaine. (Some trade and other names: 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5 H-pyrido (1, 2,: 1,2) azepino (5,4-b) indole; Tabernanthe iboga.)
- n. l. Lysergic acid diethylamide.
- o. Marijuana
- m. Marihuana.
- p. n. Mescaline.
- q. o. Parahexyl-7374; (Some trade or other names 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl.)
- r. p. Peyote, meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.
- s. q. N-ethyl-3-piperidyl benzilate.
- t. r. N-methyl-3-piperidyl benzilate.
- u. s. Psilocybin.
- v. t. Psilocyn.

w- u. Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

- (1) cis or trans tetrahydrocannabinol, and their optical isomers.
- (2) cis or trans tetrahydrocannabinol, and their optical isomers 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.) 5 cis or trans tetrahydrocannabinol, and their optical isomers.
- (3) 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- (4) Ethylamine analog of phencyclidine. Some trade or other names N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
- (5) Pyrrolidine analog of phencyclidine. Some trade or other names 1-(1-phenylcyclohexyl)-pyrrolidine, PCy, PHP.
- ~~w-~~ (6) Thiophene Analog of Phencyclidine. (Some trade or other names: 1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP.)

v. 3, 4-Methylenedioxyamphetamine. (MDMA)

5- 6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

- b. Methaqualone.
- 6- 7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Fenethylamine.
 - b. N-ethylamphetamine.

SECTION 2. AMENDMENT. Section 19-03.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-07. Schedule II.

1. The controlled substances listed in this section are included in schedule II.
2. Any of the following substances, except these narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, ~~naltrexone and its salts~~, and ~~excluding naltrexone and its salts~~, but including the following nalmefene, naloxone, and naltrexone and their respective salts, but including the following:
 - (1) Raw opium.
 - (2) Opium extracts.
 - (3) Opium fluid extracts.
 - (4) Powdered opium.

- (5) Granulated opium.
 - (6) Tincture of opium.
 - (7) Codeine.
 - (8) Ethylmorphine.
 - (9) Etorphine ~~Hydroehleride~~ hydrochloride.
 - (10) Hydrocodone.
 - (11) Hydromorphone.
 - (12) Metopon.
 - (13) Morphine.
 - (14) Oxycodone.
 - (15) Oxymorphone.
 - (16) Thebaine.
- b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.
 - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.
 - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).
- 3- 4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including ~~their~~ its isomers, esters, ethers, salts, and salts of isomers, esters and ethers whenever the existence of these such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:
- a. Alfentanil.

- b. Alphaprodine.
- b- c. Anileridine.
- e- d. Bezitramide.
- d- e. Bulk dextropropoxyphene (nondosage forms).
- e- f. Dihydrocodeine.
- f- g. Diphenoxylate.
- g- h. Fentanyl.
- k- i. Isomethadone.
- i- j. Levomethorphan.
- j- k. Levorphanol.
- k- l. Metazocine.
- i- m. Methadone.
- m- n. Methadone - ~~intermediate~~ Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- m- o. Moramide - ~~intermediate~~ Intermediate, 2-methyl-3-morpholino-1, 1-~~diphenyl-propane~~ diphenylpropane-carboxylic acid.
- e- p. Pethidine (meperidine).
- p- q. Pethidine - ~~intermediate~~ Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- q- r. Pethidine - ~~intermediate~~ Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate.
- r- s. Pethidine - ~~intermediate~~ Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- s- t. Phenazocine.
- t- u. Priminodine.
- u- v. Racemethorphan.
- v- w. Racemorphan.
- w- x. Sufentanil.
- 4- Any material, compound, mixture, or preparation which contains any quantity of the following substances having a

potential for abuse associated with a stimulant effect on the central nervous system

5. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
 - a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
 - b. Methamphetamine, including its salts, isomers, and salts of isomers.
 - c. Phenmetrazine and its salts.
 - d. Methylphenidate.
- 5- 6. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Amobarbital.
 - b. Pentobarbital.
 - c. Phencyclidine.
 - d. Secobarbital.
- 6- 7. Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:
 - a. Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P, benzyl methyl ketone; methyl benzyl ketone.
 - b. Immediate precursors to phencyclidine (PCP):
 - (1) 1-phenylcyclohexylamine.
 - (2) 1-piperidinocyclohexanecarbonitrile (PCC).
8. Hallucinogenic substances.

- a. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b, d] pyran-1-01, or (-)-delta-9-(trans)-tetrahydrocannabinol) (THC).

SECTION 3. AMENDMENT. Section 19-03.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-09. Schedule III.

1. The controlled substances listed in this section are included in schedule III.
2. Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances.
 - b. Benzphetamine.
 - c. Chlorphentermine.
 - d. Clortermine.
 - e. Phendimetrazine.
- 3- 4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
 - a. Any compound, mixture, or preparation containing:

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

b. Any suppository dosage form containing:

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;

or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

c. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.

- d. Chlorhexadol.
- e. Glutethimide.
- f. Lysergic acid.
- g. Lysergic acid amide.
- h. Methyprylon.
- i. Sulfondiethylmethane.
- j. Sulfonethylmethane.
- k. Sulfonmethane.

~~4-~~ 5. Nalorphine.

~~5-~~ 6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- a. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage

- unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
- b. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - c. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
 - d. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - e. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - f. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.
 - g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - h. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- 6- 7. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 3 and 3 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 4. AMENDMENT. Section 19-03.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-11. Schedule IV.

1. The controlled substances listed in this section are included in schedule IV.
2. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system. Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
 - a. Not more than 1 milligram of difenoxin (DEA drug code No. 9168) and not less than 25 micrograms of atropine sulfate per dosage unit.
 - b. Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxy-butane.
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Camazepam.
 - e- e. Chloral betaine.
 - d- f. Chloral hydrate.
 - e- g. Chlordiazepoxide, but not including Librax (chlordiazepoxide hydrochloride and cimetidine

bromide) or Menrium (chloridiazepoxide and water soluble esterified estrogens).

- h. Clobazam.
- ~~f~~- i. Clonazepam.
- ~~g~~- j. Clorazepate.
- k. Clotiazepam.
- l. Cloxazolam.
- m. Delorazepam.
- ~~h~~- n. Diazepam.
- o. Estazolam.
- ~~i~~- p. Ethchlorvynol.
- ~~j~~- q. Ethinamate.
- r. Ethyl Loflazepate.
- s. Ethylloflazepale.
- t. Fludiazepam.
- u. Flunitrazepam.
- ~~k~~- v. Flurazepam.
- ~~i~~- w. Halazepam.
- x. Haloxazolam.
- y. Ketazolam.
- z. Loprazolam.
- ~~m~~- aa. Lorazepam.
- bb. Lormetazepam.
- ~~n~~- cc. Mebutamate.
- dd. Medazepam.
- ~~e~~- ee. Meprobamate.
- ~~p~~- ff. Methohexital.
- ~~q~~- gg. Methylphenobarbital (mephobarbital).

- hh. Midazolam.
- ii. Nimetazepam.
- jj. Nitrazepam.
- kk. Nordiazepam.
- l. ll. Oxazepam.
- mm. Oxazolam.
- n. nn. Paraldehyde.
- o. oo. Petrichloral.
- p. pp. Phenobarbital.
- q. qq. Pinazepam.
- r. rr. Prazepam.
- s. ss. Quazepam.
- t. tt. Temazepam.
- u. uu. Tetrazepam.
- v. vv. Triazolam.
- 3- 5. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.
- 4- 6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Diethylpropion.
 - b. Mazindol.
 - c. Phentermine

- d- Pemoline (including organometallic complexes and chelates thereof).
 - d. Phentermine.
 - e. Pipradrol.
 - f. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
- 5- 7. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of pentazocine, including its salts.
- 6- Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- a- Not more than 2 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
 - b- Dextropropoxyphene (α -(+)-4-dimethylamino-1-2-diphenyl-3-methyl-2-propionoxybutane).
- 7- 8. The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 5. AMENDMENT. Section 19-03.1-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-13. Schedule V.

1. The controlled substances listed in this section are included in schedule V.
2. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the

compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing Buprenorphine or its salts.
4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.
 - a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
 - b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
 - c. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
 - d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 - f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- 3- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:
 - a- Buprenorphine-
 - b- Reserved-

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 265

HOUSE BILL NO. 1226
(Committee on Judiciary)
(At the request of the Attorney General)

FIREARMS POSSESSION UNDER CONDITIONAL DISCHARGE

AN ACT to amend and reenact sections 19-03.1-30 and 62.1-02-01 of the North Dakota Century Code, relating to possession of firearms by a person granted a conditional discharge and defining those persons who are convicted of an offense; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-30. Conditional discharge for possession as first offense. Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection 3 of section 19-03.1-23, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the person on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the extended sentence which may be imposed under section 12.1-32-09, except those disqualifications or disabilities pertaining to the possession of firearms imposed by section 62.1-02-01. There may be only one discharge and dismissal under this section with respect to any person.

SECTION 2. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of ten years from the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of five years from the date of conviction or release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended or deferred imposition of sentence in accordance with sections 12-53-13 through 12-53-19 ~~or~~, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, or the defendant's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 266

SENATE BILL NO. 2090
(Thane)CONTROLLED SUBSTANCES VIOLATION
FORFEITURES

AN ACT to amend and reenact subsection 5 of section 19-03.1-36 and sections 54-12-14 and 54-12-16 of the North Dakota Century Code, relating to property forfeited for violation of controlled substances laws and powers of drug enforcement unit personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 19-03.1-36 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. A district court shall order a seized conveyance to be forfeited upon conviction of the person arrested, upon a guilty plea, or upon the failure of a law enforcement agency to locate and arrest after one month the person who used the conveyance subject to forfeiture. When property is forfeited under this chapter the board or a law enforcement agency may:
 - a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
 - b. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs, with any remaining

proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.

- c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.
- d. Forward it to the bureau for disposition.

SECTION 2. AMENDMENT. Section 54-12-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-14. Drug control cash Assets forfeiture fund - Created - Purpose. There is hereby created from the attorney general's appropriation a cash fund to be known as the attorney general drug control cash assets forfeiture fund in such amount as may be appropriated by the legislative assembly, which shall be used for the purpose of obtaining evidence for enforcement of any state law relating to the control of drug abuse. The fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36 and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. The total aggregate amount in the fund may not exceed five hundred thousand dollars and at the end of each fiscal year any moneys in excess of that amount shall be deposited in the general fund. Subject to legislative appropriation, the funds must be made available to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For paying, at the discretion of the attorney general, awards for information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping for law enforcement functions forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state controlled substances board or a law enforcement agency.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary

accounting procedures for the use of such fund, and shall personally approve, in writing, all requests from the chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of said fund and shall be accountable to the legislative council, upon request, for the expenditure thereof.

SECTION 3. AMENDMENT. Section 54-12-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-16. Powers of drug enforcement unit personnel. For purposes of carrying out the provisions of section 54-12-15, and such other duties in the investigation, detection, apprehension, prosecution, or suppression of crime as may be assigned by the attorney general, any officer of the drug enforcement unit designated by the attorney general shall have all the powers conferred by law upon any peace officer of this state.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 267

HOUSE BILL NO. 1685

(Dorso, A. Olson)

(Approved by the Committee on Delayed Bills)

ALCOHOL-BLENDED GASOLINE DISCLOSURE

AN ACT to amend and reenact section 19-10-03.1 of the North Dakota Century Code, relating to disclosure of contents of certain gasoline.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-10-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-03.1. Retail sale of alcohol-blended gasoline - Notice required. No dealer may sell at retail alcohol-blended gasoline unless the dispensing unit ~~bears the word "contains"~~ and any price advertising bear the name of the alcohol blended with the gasoline, if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label.

Approved April 17, 1987

Filed April 20, 1987

CHAPTER 268

SENATE BILL NO. 2206
(Committee on Agriculture)
(At the request of the State Laboratories Department)

FEED LABELING — ANTIFREEZE REGISTRATION

AN ACT to amend and reenact sections 19-13.1-04 and 19-16.1-03 of the North Dakota Century Code, relating to the labeling of commercial feed and registration of antifreeze.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-13.1-04. Labeling. Any commercial feed distributed in this state shall be accompanied by a legible label bearing the following information:

1. The net weight.
2. The product name and brand name, if any, under which the commercial feed is distributed.
3. The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber; additional guarantees required to be or intentionally shown, shall appear only in the guaranteed analysis section of the label after the guarantee for maximum crude fiber. For all mineral feeds and for those commercial feeds containing a level of added mineral ingredients established by regulation, the list shall include the following, if added: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of sodium (Na); and minimum and maximum percentage of chloride (Cl) salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the

methods and regulations that may be prescribed by the department. The department may by regulation designate certain commercial feeds which need not be labeled to show guarantees for crude protein, crude fat, and crude fiber.

4. The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.
5. The name and principal address of the person responsible for distributing the commercial feed.

SECTION 2. AMENDMENT. Section 19-16.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-03. Registration. Before any antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall make application to the department on forms provided by the latter for registration for each antifreeze which the manufacturer or person whose name appears on the label desires to distribute. All registrations expire on June thirtieth of each year. The application for registration shall be accompanied by specimens or facsimiles of its labeling, an inspection fee of forty dollars for each product, and by a properly labeled sample of the antifreeze label or other printed matter describing the product. The department shall inspect, test, or analyze the antifreeze and review the label. If the antifreeze and labeling is not adulterated or misbranded, the department shall issue a certificate of registration, authorizing the distribution of such antifreeze in this state for one year ending June thirtieth. If the antifreeze or label is not in conformity with the law, the department shall refuse to register the antifreeze and shall return the application to the applicant, stating the reasons therefor. Upon approval by the department, a copy of the registration must be furnished to the applicant. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund. A penalty of fifty percent of the registration fee shall be imposed if the certificate of registration is not applied for on or before July first of each year, or within the same month such antifreeze is first manufactured or sold within this state.

Approved March 12, 1987
Filed March 16, 1987

GAME AND FISH

CHAPTER 269

SENATE BILL NO. 2061
(Legislative Council)
(Interim Judiciary Committee)

NONCRIMINAL GAME AND FISH OFFENSES

AN ACT to amend and reenact sections 20.1-01-28, 20.1-01-29, and 20.1-01-30 of the North Dakota Century Code, relating to the procedures applicable to noncriminal violations of rules approved by the game and fish commissioner and orders issued by the governor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-28. Certain game and fish violations noncriminal - Procedures. Any person who has been cited for a violation that is designated as a noncriminal offense under in this title or in related rules or proclamations may appear before a court of competent jurisdiction and pay the statutory fee at or prior to the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. A person appearing at the time scheduled in the citation may make a statement in explanation of that person's action and the judge may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, that person has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the judge must be identical to the statutory fee established by section 20.1-01-30. Within ten days after forfeiture of bond or payment of the statutory fee, the judge shall certify to the commissioner admission of the violation.

This section does not allow a halting officer to receive the statutory fee or bond.

SECTION 2. AMENDMENT. Section 20.1-01-29 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-29. Hearing procedures.

1. If a person cited for a violation that is designated as a noncriminal offense in this title or in related rules or proclamations does not choose to follow one of the procedures set forth in section 20.1-01-28, that person may request a hearing on the issue of the commission of the violation charged. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance.
2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the court an appearance bond equal to the statutory fee for the violation charged.
3. The state must prove the commission of a charged violation at the hearing under this section by a preponderance of the evidence. If, after a hearing, the court finds that the person had committed a noncriminal violation of this title or of related proclamations or rules, the court shall notify the department within ten days of the date of hearing.

SECTION 3. AMENDMENT. Section 20.1-01-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-30. Amount of statutory fees. The fees required for a noncriminal disposition pursuant to section 20.1-01-28 or 20.1-01-29 are as follows:

1. For a class 1 noncriminal offense, a fee of fifty dollars.
2. For a class 2 noncriminal offense, a fee of twenty-five dollars.
3. For violation of a rule approved by the commissioner or of an order or proclamation issued by the governor, the amount set in the rule, order, or proclamation up to a maximum of two hundred fifty dollars.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 270

HOUSE BILL NO. 1086
(Representative L. Hanson)
(Senator Freborg)

HUNTERS' RIGHTS INTERFERENCE

AN ACT to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to interference with rights of hunters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interference with rights of hunters. No person may intentionally interfere with the lawful taking of wildlife on public land by another or intentionally harass, drive, or disturb any wildlife on public land for the purpose of disrupting a lawful hunt. This section does not apply to any incidental interference arising from lawful activity by public land users.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 271

HOUSE BILL NO. 1609
(Representatives Whalen, Thompson, Wald)
(Senators Bakewell, Langley)

FREE FISHING LICENSES

AN ACT to create and enact a new subsection to section 20.1-02-05 of the North Dakota Century Code, relating to complimentary fishing licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-02-05 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Issue, as a means of encouraging and promoting economic development in this state, complimentary fishing licenses to nonresident visiting dignitaries. The circumstances and conditions of complimentary fishing licenses issued shall be determined by the commissioner. The number of complimentary licenses shall not exceed fifty licenses per year. The visiting dignitaries shall be determined by the commissioner to be of national or international stature before being eligible for complimentary licenses.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 272

HOUSE BILL NO. 1483
(Representatives Hamerlik, Shaft, J. DeMers)
(Senators Ingstad, Krauter)

NONGAME WILDLIFE FUND

AN ACT to establish a nongame wildlife fund and provide for uses of the fund; to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to an optional contribution to the nongame wildlife fund to be included on North Dakota income tax returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Nongame wildlife fund established - Uses - Appropriation. There is hereby established in the state treasury a special fund known as the nongame wildlife fund. The fund may be expended subject to appropriation by the legislative assembly to the game and fish department and must be used only for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state. The game and fish department shall allocate a portion of the fund to other state agencies for the purpose stated in this section, and with approval of the game and fish commissioner. For the purpose of this section, "nongame wildlife" means all species of native animals not commonly taken for sport or commercial purposes and does not include animals determined by the game and fish department to be harmful animals. "Natural areas" and "nature preserves" mean areas as defined in section 55-11-02.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Optional contributions to nongame wildlife fund. On all tax returns under this chapter, a taxpayer may designate a contribution to the nongame wildlife fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the taxpayer. On all state income tax returns the tax commissioner shall notify taxpayers of this optional contribution. The amount of these optional contributions must be transferred by the tax commissioner to the state treasurer for deposit in the nongame wildlife fund for use as provided in section 1 of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1987.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 273

SENATE BILL NO. 2033
(Legislative Council)
(Interim Agriculture Committee)

WETLANDS MEDIATION ADVISORY BOARD

AN ACT to create and enact three new sections to chapter 20.1-02 of the North Dakota Century Code, establishing a wetlands mediation advisory board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Wetlands mediation advisory board. The wetlands mediation advisory board consists of the governor, or the governor's duly authorized designee, as chairman; the commissioner of agriculture, or the commissioner's duly authorized designee; the president, or a member selected by the president, of the North Dakota farmers union; the president, or a member selected by the president, of the North Dakota farm bureau; the president, or a member selected by the president, of the North Dakota national farmers organization; the state engineer of the water commission, or the state engineer's duly authorized designee; the state game and fish commissioner, or the commissioner's duly authorized designee; the regional director of the United States fish and wildlife service, or the regional director's duly authorized designee; the executive director, or a member selected by the executive director, of the state association of counties; and the executive vice president, or a member selected by the executive vice president, of the state association of soil conservation districts.

SECTION 2. A new section to chapter 20.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Wetlands mediation advisory board - Meetings - Staff - Compensation and expenses. The wetlands mediation advisory board shall meet at the call of the governor. The governor's office shall provide staff services to the board. Compensation and expenses of any board

member are the responsibility of the organization or entity represented.

SECTION 3. A new section to chapter 20.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Wetlands mediation advisory board - Petition - Mediation - Hearing. Any person aggrieved by a decision of the United States fish and wildlife service pertaining to wetlands may petition the governor in writing for aid after all administrative remedies have been exhausted. The petition must establish that all such administrative remedies have been exhausted. The governor shall submit the dispute or conflict to the wetlands mediation advisory board. The board shall mediate the dispute or conflict. The board may hold a hearing upon not less than ten days' written notice to the parties involved in the dispute for the purpose of receiving evidence from all interested parties. The board shall make a recommendation to the governor and the regional director of the United States fish and wildlife service within thirty days of submission of the dispute or conflict to the board. A recommendation of the board is not subject to judicial review under chapter 28-32.

Approved April 4, 1987

Filed April 6, 1987

CHAPTER 274

HOUSE BILL NO. 1284
(Representatives Belter, Lindgren)
(Senator D. Meyer)

BOWHUNTER SAFETY

AN ACT to amend and reenact sections 20.1-03-01.1 and 20.1-03-01.3 of the North Dakota Century Code, relating to bowhunter safety requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-01.1. Commissioner to appoint and train instructors - Prescribe course material and classroom sites - Certify completion. The commissioner shall provide classroom instruction on, and shall select, train, and certify persons or department personnel qualified to provide instruction on, firearms and bow safety and hunter responsibility, and shall prescribe the course material to be used, classroom locations, and the dates for teaching the course in this state. The commissioner shall authorize the issuance of a certificate of completion to all persons satisfactorily completing the course.

SECTION 2. AMENDMENT. Section 20.1-03-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-01.3. Exemptions. ~~The provisions of sections~~ Sections 20.1-03-01.1 through 20.1-03-01.3 shall do not apply to:

1. Persons under twelve years of age who hunt only with their parent or legal guardian.
2. ~~Persons who hunt only with a bow.~~
- 3- Persons who hunt exclusively on land of which they are the record title owner or operator.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 275

SENATE BILL NO. 2412
(Senator D. Meyer)
(Representative Murphy)

ELK HUNTING

AN ACT to create and enact a new subsection to section 20.1-03-11 and a new section to chapter 20.1-08 of the North Dakota Century Code, relating to licenses issued to landowners to hunt elk and the governor's proclamation on the hunting of elk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-11 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Upon execution and filing of an affidavit describing a minimum of one-quarter section [64.75 hectares] of land owned or leased and actively farmed or ranched by any person within a district or unit open for hunting of elk, that person is entitled to receive, upon payment of the fee requirement for a resident big game license, a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; and the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and the east one-half of township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County. The number

of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

SECTION 2. A new section to chapter 20.1-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Governor's proclamation concerning the hunting of elk - License recipients not eligible to apply again. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor shall prescribe. Licenses to hunt elk must be issued by lottery, except as provided under section 1 of this Act, with only residents eligible to apply. A person who has received a license to hunt elk is not eligible to apply for another such license.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 276

SENATE BILL NO. 2543 (Lips)

HANDICAPPED OR DISABLED HUNTERS

AN ACT to create and enact a new subsection to section 20.1-03-11 of the North Dakota Century Code, relating to deer hunting licenses issued to handicapped or permanently disabled persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-11 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Any person who is permanently unable to walk for purposes of hunting or taking wildlife and who receives or obtains, whether issued by lottery or otherwise, a license to hunt deer, is entitled to take any sex or species of deer in the unit or subunit for which the license is issued. Notwithstanding any other law or any provision contained in the governor's proclamation concerning the hunting of deer, any person who is permanently unable to walk for purposes of hunting or taking wildlife is entitled to apply for a license to hunt deer regardless of whether that person received a license to hunt deer in any prior year.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 277

SENATE BILL NO. 2239
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

FISHING LICENSE FEES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to fees for nonresident fishing licenses; and to amend and reenact subsections 6, 8, and 9 of section 20.1-03-12 of the North Dakota Century Code, relating to fees for fishing licenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6, 8, and 9 of section 20.1-03-12 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. For a resident fishing license, ~~six~~ nine dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee shall be ~~two~~ three dollars.
8. For a nonresident short-term seven-day fishing license, ~~eight~~ thirteen dollars.
9. For a resident husband and wife fishing license, ~~ten~~ thirteen dollars.

SECTION 2. A new subsection to section 20.1-03-12 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For a nonresident short-term three-day fishing license, eight dollars.

SECTION 3. EFFECTIVE DATE. This Act is effective for the fishing seasons starting on or after May 7, 1988.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 278

SENATE BILL NO. 2482
(Senator Nelson)
(Representatives Belter, Dalrymple)

HABITAT RESTORATION STAMPS

AN ACT to amend and reenact section 20.1-03-12.1 of the North Dakota Century Code, relating to habitat restoration stamps; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-12.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - No land purchases allowed. A habitat restoration stamp shall be is required for every resident and nonresident ~~small general game hunting~~ license for which a stamp fee of three dollars shall be charged. The habitat restoration stamp fee shall be is in addition to the annual general game license and ~~small game hunting license fees~~ fee charged pursuant to section 20.1-03-12. No land shall may be purchased with habitat restoration stamp moneys. ~~The All~~ moneys generated by the habitat restoration stamp fee program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program must be placed in the habitat restoration stamp fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp fee shall program must be used for lease payments. Any moneys generated by the habitat restoration stamp fee program and not expended during a biennium shall remain in the fund ~~to~~ must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than ~~twenty acres [8.09 hectares]~~ forty acres [16.18 hectares] in any section [259.00 hectares] of land may be leased for such purposes. Hunting shall may not be prohibited on such lands. In those judicial districts encompassing the historically prime pheasant range, as determined by the state game and fish commissioner, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1988.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 279

HOUSE BILL NO. 1263
(Representatives L. Hanson, Marks)
(Senators Langley, Wogsland)

HUNTING WITH HORSES OR MULES

AN ACT to amend and reenact section 20.1-05-04 of the North Dakota Century Code, relating to the use of horses and mules in the taking of big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-05-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-05-04. Using ~~dogs, horses,~~ certain animals and artificial lights in taking big game unlawful. No person, to hunt, pursue, kill, take, or attempt to take, or to aid in the hunting or taking of, any big game animal, shall:

1. Use any ~~dog, horse, mule, or other~~ animal except horses or mules.
2. Use any artificial light, including spotlights and automobile and motorcycle headlights.
3. Engage in the practice commonly known as shining for deer. Any person who shines any area commonly frequented by big game animals with any artificial light, between the hours of sunset and sunrise, is in violation of this section. However, any person may use a flashlight of not over two cells in the aggregate of four volts to take raccoon.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 280

**SENATE BILL NO. 2451
(Schoenwald)**

BIG GAME HUNTING BY BLIND PERSONS

AN ACT to create and enact a new section to chapter 20.1-05 of the North Dakota Century Code, relating to the taking of big game by blind persons.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. A new section to chapter 20.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Taking of big game by blind persons. Any individual who is totally or partially blind and who holds a valid big game hunting license may be accompanied by and have a person designated on the license, who is otherwise qualified, hunt big game for that individual except as provided by section 20.1-01-12.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 281

HOUSE BILL NO. 1437
(Gunsch, C. Williams)

SPEARFISHING

AN ACT to amend and reenact section 20.1-08-04.4 of the North Dakota Century Code, relating to the governor's proclamation concerning underwater spearfishing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-08-04.4. Governor's proclamation concerning underwater spearfishing. The governor shall by proclamation provide for a season for resident underwater spearfishing for game fish in this state in a manner as the governor shall prescribe ~~for the fishing seasons beginning in 1986 and 1987.~~

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 282

HOUSE BILL NO. 1497
(Marks, J. Nelson, Hokana, W. Williams, R. Berg)

MUZZLELOADER HUNTING SEASON

AN ACT to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to the hunting of deer with muzzleloading long guns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Governor's proclamation concerning the hunting of deer with muzzleloading long guns. The governor shall by proclamation provide for a one-week season following the regular deer hunting season to hunt deer with muzzleloading long guns in such manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading long guns shall be issued by the commissioner in the order the applications for the licenses are received by the commissioner, with a maximum of five hundred licenses issued each season. As used in this section, the term "muzzleloading long gun" means any forty-five or larger caliber long gun loaded through the muzzle.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 283

SENATE BILL NO. 2400
(Nelson)

GAME AND FISH VIOLATORS PROPERTY CONFISCATION

AN ACT to amend and reenact sections 20.1-10-03 and 20.1-10-04 of the North Dakota Century Code, relating to confiscation of property taken or used during game and fish violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-10-03. Confiscated property - Courts having jurisdiction - When it may be sold Requisites for disposition. A court having jurisdiction of an alleged offense against this title may order the sale disposition of all birds, animals, or fish, or any part thereof, or other property which that has been confiscated. This order may be entered only after a hearing duly had upon proper notice to the owner and after due and proper finding by the court that the property:

1. Was taken, killed, possessed, or being transported contrary to law by the person from whom it was seized.
2. Was being used in violation of this title at the time it was seized.
3. Had been used in violation of this title within six months previous to the time it was seized.

SECTION 2. AMENDMENT. Section 20.1-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-10-04. Who to sell confiscated property - Bills of sale - Disposition of proceeds of sale. All confiscated property ordered sold shall be sold by the commissioner, or by any of his bonded appointees, that a court has ordered to be disposed of by the commissioner must be turned over to the North Dakota wildlife federation to be sold for

the highest price obtainable. On any such sale of animals, birds, or fish, or parts thereof, the seller shall issue to each purchaser a bill of sale on forms prepared and furnished by the commissioner. The sale proceeds, after the ~~expense~~ expenses of the seizure and the sale ~~is~~ are deducted, shall ~~must~~ be remitted ~~to the commissioner~~ promptly by the person under whose authority and supervision the sale was made to the North Dakota wildlife federation report all poachers fund. The remittance shall ~~shall~~ must be accompanied by a complete and certified report of the sale supported by proper vouchers covering all deductions made for expenses. This report shall ~~shall~~ must be filed for record with the commissioner. The commissioner shall pay into the state treasury for credit to the game and fish fund all money received by him from these sales-

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 284

HOUSE BILL NO. 1501
(Knell, Gunsch)

PRIVATE SHOOTING PRESERVES

AN ACT to create and enact a new section to chapter 20.1-12 of the North Dakota Century Code, relating to the harvesting of game birds on private shooting preserves; and to amend and reenact sections 20.1-12-02, 20.1-12-03, 20.1-12-05, and 20.1-12-07 of the North Dakota Century Code, relating to private shooting preserves.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-12-02. Operating permit for shooting preserve. Any person owning, holding, or controlling, by lease or otherwise, any contiguous tract of land of not more than one thousand two hundred eighty acres [548 hectares], who desires to establish a shooting preserve under this chapter, may apply to the commissioner for a shooting preserve operating permit. The application shall must be made by the applicant, his the applicant's agent, or his the applicant's attorney; shall must be in such form as the commissioner may prescribe; and shall must be accompanied by the surety bond required by this chapter and by the appropriate operating permit fee. Acreage [hectarage] amounts shall must include lands used for hatching, game production areas, or headquarters areas. Upon the receipt of the application, the commissioner shall inspect the area described therein, including the facilities, and shall investigate the ability of the applicant to operate an area of this character, in accordance with section 20.1-12-03. The permit, if granted, shall must be issued for one year, and may be renewed annually by payment of the appropriate operating permit fee and the renewal of any surety bond that may have expired, or shall expire, before the end of the next permit term.

SECTION 2. AMENDMENT. Section 20.1-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-12-03. Prerequisites for the issuance of permits - Bonds. Before issuing any permit under this chapter, the commissioner shall determine that:

1. The applicant is financially able to provide the necessary facilities and services to operate a shooting preserve.
2. The applicant proposes to comply with this chapter.
3. The operation of the preserve will not work a fraud upon persons permitted to hunt thereon.
4. The operation of the preserve is not designed to circumvent game laws or regulations.
5. The issuance of the permit will be in the public interest.

Before any permit is issued to the applicant, he that person must file a two thousand dollar bond to the state, executed by a surety company authorized to do business in the state, and conditioned that the applicant will comply with the provisions of this chapter and the rules and regulations promulgated adopted by the commissioner thereunder, and will pay any fine and costs upon conviction of the permittee for violation of this chapter and all reasonable costs arising from any hearing for revocation or suspension of the permit. The bond requirement of this section does not apply to any person who is both the record title owner and operator of a private shooting preserve.

SECTION 3. AMENDMENT. Section 20.1-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-12-05. Operation of shooting preserve - Game license required-- Season - Search of premises permitted. Any guest of a shooting preserve operator, in possession of a general game license, may harvest any game bird within the defined limits of the shooting preserve, subject to this chapter. The shooting preserve operator may establish his that person's own restrictions on the age, sex, and number of each game bird that may be taken by each guest, and the fee to be paid by each guest. The exterior boundaries of each shooting preserve shall must be clearly defined and posted with signs erected around the extremity at intervals of ~~one~~ three hundred ~~fifty~~ feet [~~45-72~~ 91.44 meters] or less. Each shooting preserve operator and his that person's guest shall comply with and be subject to chapter 20.1-01. Shooting preserve operators may restrict or set the hours during which game birds may be hunted, subject to section 20.1-01-10. The season for shooting preserves may be all or part of the seven-month period beginning September first and ending March thirty-first of the following year. All permits shall must be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the commissioner may enter and search the premises

or any part thereof at any reasonable time to ensure compliance with state laws and the commissioner's rules and regulations.

SECTION 4. A new section to chapter 20.1-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Game birds harvested. Twenty percent of the game birds released on any shooting preserve must remain unharvested. When eighty percent of the game birds released on the shooting preserve have been harvested, the operation of the shooting preserve must cease until additional birds have been released.

SECTION 5. AMENDMENT. Section 20.1-12-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-12-07. Guest register and records to be maintained. Each shooting preserve operator shall maintain a guest register listing the guest's name, his and address, the number of his North Dakota general game license, the date on which he the guest hunted, the number of game birds and species taken and their tag numbers, with wild birds and operator released birds listed separately. A record ~~shall~~ must also be maintained by each shooting preserve operator of the source of game released in his the operator's preserve, the date of release, and the number and kind of game bird or species released. The records required by this section ~~shall~~ must be open for inspection by the commissioner, his the commissioner's representative, or any law enforcement officer at any reasonable time.

Approved March 19, 1987
Filed March 20, 1987

GOVERNMENTAL FINANCE

CHAPTER 285

HOUSE BILL NO. 1417
(Sorensen)

EVIDENCE OF INDEBTEDNESS REVIEW

AN ACT to provide for judicial review of proceedings by political subdivisions relating to the issuance of evidence of indebtedness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Proceedings to judicially confirm evidence of indebtedness proceedings. Any political subdivision of the state authorized to issue evidence of indebtedness, prior to or subsequent to adoption of any or all of the proceedings regarding the issuance of that evidence of indebtedness or proceedings relating to the payment of that evidence of indebtedness may commence a special proceeding in district court to have those proceedings judicially examined, approved, and confirmed or disapproved.

SECTION 2. Petition by political subdivision of the state for court to examine and approve evidence of indebtedness proceedings - Contents of petition. Any political subdivision of the state may file in the district court of any county in which the political subdivision is situated, in whole or in part, a petition, prior to or subsequent to issuance of any evidence of indebtedness, requesting that any or all of the proceedings regarding the issuance or payment of the evidence of indebtedness be examined, approved, and confirmed by the court. The petition must state the facts concerning the proceedings and that the petitioner is a political subdivision of the state.

SECTION 3. Hearing of petition - Notice of filing and hearing. The court shall fix the time for the hearing of the petition provided for in this Act and shall order the clerk of court to have published a notice of the filing of the petition, stating the time and place the court will hear the petition, and stating that any person interested in the proceedings for the issuance or payment of the evidence of indebtedness, on or before the day fixed for hearing of the petition, may answer the petition. The petition may be referred to and described in the notice as the petition of the named political subdivision requesting that the proceedings be examined, approved, and confirmed by the court. Notice must be given by publication in the official newspaper of the county in which the

petition is filed, once each week for two consecutive weeks. The hearing must be held, in the discretion of the court, not less than fifteen days nor more than sixty days after the last publication of the notice.

SECTION 4. Answer to petition - Defense by person interested. Any person interested in the proceedings for issuance or sale of the evidence of indebtedness or proceedings relating to the payment of the evidence of indebtedness may answer the petition. The provisions of title 28 and the North Dakota Rules of Civil Procedure relating to the answer to a complaint are applicable to an answer to a petition. The person answering the petition must be the defendant in the special proceeding and the political subdivision must be the plaintiff. Every material statement of the petition not specifically controverted by the answer, for the purpose of the special proceeding, is to be taken as true. Each person failing to answer the petition is deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by title 28 and the North Dakota Rules of Civil Procedure which are not inconsistent with the provisions of this Act are applicable to the special proceeding provided for in this Act.

SECTION 5. Powers of court upon trial - Amendment of petition. At the time and place for the hearing, the court shall find and determine whether the notice of the filing of the petition has been published. When the court has determined that it has jurisdiction to hear the petition, it shall proceed with the hearing and shall conduct the hearing as in the case of a trial of a civil action without a jury. The court shall examine into and determine the legality and validity of the proceedings and all matters affecting the legality or validity of proceedings for the issuance or payment of the evidence of indebtedness. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to the hearing. The court shall permit the petition to be amended so as to conform to the evidence and facts presented at the hearing.

SECTION 6. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings. Upon the conclusion of the hearing the court shall determine the legality and validity of the proceedings for the issuance or payment of the evidence of indebtedness and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law and shall order that the decree of the court be entered.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 286

SENATE BILL NO. 2439
(Nething, Todd, Olson)

SECURITY PLEDGES

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to financial institutions pledge of investment company shares in place of depository bond.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-04-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-04-09. Pledge of security in place of depository bond. The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, such board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities which shall be eligible for such pledge shall be bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. Such securities may be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon, which financial institution prior thereto has been approved as a custodian for such purpose by the state auditor. Whenever any such securities are so deposited for safekeeping with any custodian, such custodian

shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging such securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities so pledged. The securities so substituted shall, at the time of such substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of such substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered or certified mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository financial institution.

No pledge of security or bond shall be required for any funds deposited with a financial institution to the extent that such deposits are insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or the national credit union association.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 287

SENATE BILL NO. 2285
(Lodoen)

BOND VALIDATION

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to the validation of bonds issued by public bodies of the state prior to July 1, 1987.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-09-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-09-05. Application of chapter. The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1983~~ 1987.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 288

HOUSE BILL NO. 1236
(Committee on State and Federal Government)
(At the request of the State Investment Board)

STATE INVESTMENT BOARD FUND

AN ACT to create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to investment costs; to amend and reenact sections 21-10-03, 21-10-06, and 21-10-10 of the North Dakota Century Code, relating to secretary of the state investment board, separate accounts, and cost of operation of the state investment board; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 21-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-03. Cooperation with Bank of North Dakota. Activities of the board, its agents, and its employees shall be coordinated with the Bank of North Dakota to the maximum extent practicable. The president of the Bank of North Dakota shall serve as secretary of the state investment board.

** SECTION 2. AMENDMENT. Section 21-10-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement, in accordance with section 15-39.1-26.
3. State fire and tornado fund.
4. Workmen's compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.

* NOTE: Section 21-10-03 was repealed by section 14 of House Bill No. 1031, chapter 190.

** NOTE: Section 21-10-06 was also amended by section 8 of House Bill No. 1031, chapter 190.

6. National guard training area and facility development trust fund.
7. National guard tuition trust fund.

Separate accounts accounting shall be maintained for each of the above funds and the moneys or securities of the individual funds shall not be commingled. However, when it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds shall immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to or credit for the securities shall be taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies, and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf.

SECTION 3. A new section to chapter 21-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Investment costs. Investment costs, such as investment counseling fees, trustee fees, custodial fees, performance measurement fees, and asset allocation expenses, charged by money management firms or investment consultants under contract with the state investment board must be paid directly out of the funds listed in section 21-10-06 by the fund incurring the expense.

SECTION 4. AMENDMENT. Section 21-10-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-10. State investment board fund - Cost of operation of board. The biennial costs of operation of the board and its agents in carrying out the provisions of this chapter, shall be estimated by the board and prorated among the various funds enumerated under section 21-10-06 in proportion to the services rendered for such funds. Such estimates shall be submitted to the office of the budget and appropriations for the operations of the investment board shall be made from the respective funds in accordance with such proration estimates. The proportion allocated for services rendered to funds under the control of the board of university and school lands shall be paid from its legislative appropriation. A special fund known as the "state investment board fund" must be established for the purpose of defraying administrative expenses of the state investment board and its agents in carrying out the provisions of this chapter. The administrative costs of operating the state investment board must be estimated biennially and presented to the office of management and budget in accordance with chapter 54-44.1.

The actual amount of administrative expenses incurred by the state investment board must be paid from the respective funds, without need for appropriation, to the state investment board fund in proportion to the services rendered for each fund as estimated by the state investment board. The funds necessary to pay all administrative expenses of the state investment board are hereby appropriated and must be paid directly from the state investment board fund by preparing an appropriate voucher and submitting the voucher to the office of management and budget.

SECTION 5. AMENDMENT. Section 21-10-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-10. State investment board fund - Cost of operation of board. The biennial costs of operation of the board and its agents in carrying out the provisions of this chapter, shall be estimated by the board and prorated among the various funds enumerated under section 21-10-06 in proportion to the services rendered for such funds. Such estimates shall be submitted to the office of the budget and appropriations for the operations of the investment board shall be made from the respective funds in accordance with such proration estimates. The proportion allocated for services rendered to funds under the control of the board of university and school lands shall be paid from its legislative appropriation. A special fund known as the "state investment board fund" must be established for the purpose of defraying administrative expenses of the state investment board and its agents in carrying out the provisions of this chapter. The administrative costs of operating the state investment board must be estimated biennially and presented to the office of management and budget in accordance with chapter 54-44.1. The actual amount of administrative expenses incurred by the state investment board must be paid from the respective funds, without need for appropriation, to the state investment board fund in proportion to the services rendered for each fund as estimated by the state investment board. The funds necessary to pay all administrative expenses of the state investment board must be paid from the state investment board fund under legislative appropriation authority.

SECTION 6. EFFECTIVE DATE - EXPIRATION DATE. Section 5 of this Act becomes effective on July 1, 1989. Section 4 of this Act is effective through June 30, 1989, and after that date is ineffective.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 289

HOUSE BILL NO. 1233
(Committee on Political Subdivisions)
(At the request of the Governor)

PRIVATE ACTIVITY BOND CEILING

AN ACT to provide a formula for allocating North Dakota's private activity bond ceiling under federal law among the governmental units in North Dakota having authority to issue private activity bonds; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context clearly requires otherwise, the following definitions apply:

1. "Ceiling" means the dollar amount applicable to North Dakota for any calendar year for the issuance of tax-exempt private activity bonds, as determined under the Tax Reform Act.
2. "Governmental unit" means any political subdivision of North Dakota or other authority in the state, including the state or any of its agencies, instrumentalities, or authorities, having the authority to issue private activity bonds.
3. "Private activity bond" means a tax-exempt evidence of indebtedness which is a private activity bond under the Tax Reform Act.
4. "Tax Reform Act" means the Tax Reform Act of 1986 [Pub. L. 99-514] and any federal regulations issued thereunder relating to the allocation of North Dakota's ceiling for the issuance of tax-exempt private activity bonds.

SECTION 2. Allocation of ceiling. In lieu of the formula set out in the Tax Reform Act for allocating the ceiling among the state's governmental units, the governor shall, by executive order or proclamation, establish a different allocation formula which may allocate to a governmental unit a portion of the ceiling or may establish a procedure for a governmental unit to apply to the governor's office for an allocation by the governor within the

ceiling. The application established by the governor may include a request for the following information:

1. The name of the governmental unit applying for an allocation of the ceiling.
2. A description of the governmental unit's proposed project or purpose for which the private activity bonds are intended to be issued.
3. The location of the project authorized by the governmental unit.
4. The name and address of the project owner or operator and all principal users of the project or the manager or director of the program which is the purpose for which the private activity bonds are to be issued.
5. A certified copy of the inducement resolution adopted by the governmental unit under the Tax Reform Act approving the project or purpose and granting preliminary authorization for the issuance of the private activity bonds, or other preliminary approval of the issuance of the private activity bonds which is comparable to an inducement resolution.
6. A preliminary opinion of a qualified bond counsel which states that the proposed bond issue qualifies as a private activity bond under applicable federal law and, if the private activity bonds are issued, that the bonds must be within the ceiling for the interest on the bonds to be exempt from federal income taxation under the Tax Reform Act.
7. Evidence that all public hearing requirements concerning the proposed project or purpose have been met under state law and the Tax Reform Act.
8. The allocation of the ceiling requested by the governmental unit.

SECTION 3. Order in which allocations issued. Allocations of the ceiling may be made on the basis of the chronological receipt of completed applications or, if completed applications are received on the same day by the governor, according to the earliest inducement resolution date, or on a case by case basis without regard to the date of receipt of the application or to the date of the inducement resolution.

SECTION 4. Requirements of allocations. The governor may establish, by executive order or proclamation, other procedures and requirements for the proper allocation of the ceiling, which may include the following:

1. The procedure for notification of approval or disapproval of application for an allocation.
2. The period during which the private activity bonds must be issued under an allocation and a procedure for applying for an extension of that period.
3. A procedure for authorizing a carryforward to a governmental unit of all or a portion of the excess of North Dakota's ceiling for any calendar year over the aggregate amount of tax-exempt private activity bonds actually issued during that calendar year by governmental units, to the extent and for the period for which a purpose is eligible to be treated as a carryforward project under the Tax Reform Act.
4. Whether an allocation validly granted may be transferred between projects and purposes by governmental units.
5. A procedure for reapplication if a request for an allocation by a governmental unit has been disapproved.
6. A procedure for recapturing an allocation for which the period during which the allocation is valid has expired.
7. Any additional procedures or requirements which the governor determines to be necessary for the proper administration and to carry out the purposes of this Act.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 1988.

Approved April 15, 1987
Filed April 15, 1987

HEALTH AND SAFETY

CHAPTER 290

SENATE BILL NO. 2117
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Health)

HEALTH OFFICER DISEASE CONTROL ORDERS

AN ACT to create and enact a new subsection to section 23-01-05 of the North Dakota Century Code, relating to the powers and duties of the state health officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-01-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities, and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 291

HOUSE BILL NO. 1330
(Larson, Ulmer)

TRAUMATIC HEAD INJURY REGISTRY

AN ACT to provide for the establishment of a registry of traumatic head injuries and to require the attending physician to report such injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. "Traumatic head injury" defined. As used in section 2 of this Act, "traumatic head injury" means an insult to the brain, not of a degenerative or congenital nature but caused by an external physical force that may produce a diminished or altered state of consciousness, which results in impairment of cognitive abilities or physical functioning and which may also result in the disturbance of behavioral or emotional functioning. These impairments may be either temporary or permanent and cause partial or total functional disability or psychosocial maladjustment.

SECTION 2. Central registry of traumatic head injury - Establishment - Reports. The state department of health shall establish and maintain a central registry of persons who sustain traumatic head injury in order to facilitate the provision of appropriate treatment and rehabilitative services to those persons by the division or other providers. Attending physicians in the state shall report to the department within seven days after identification of any person sustaining a traumatic head injury. The report must contain the name, age, residence, and diagnosis of the injured person and any additional information determined to be necessary by the department. A report submitted pursuant to this section and all information contained in the report is confidential, but the state department of health shall furnish a copy of the report to the department of human services. The department of human services shall use the information contained in the report to carry out the purposes of this Act and shall notify the attending physician and the injured person or immediate family of the rehabilitative services for persons sustaining traumatic head injuries.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 292

HOUSE BILL NO. 1665
(Representatives Stofferahn, Dalrymple)
(Senator Wright)

HEALTH CARE DATA COMMITTEE

AN ACT to establish a health care data committee as a standing committee of the state health council; and to provide a civil penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Health care data committee of state health council - Membership - Appointment by governor. The health care data committee is a standing committee of the state health council, consisting of not less than three nor more than five members, appointed by the chairman of the health council from the members of the council. A majority of the members of the health care data committee must be consumer members of the health council.

SECTION 2. Duties of health care data committee. To provide information to the public necessary for the enhancement of price competition in the health care market, the health care data committee may:

1. Collect, store, analyze, and provide health care data.
2. Compile the average aggregate charges by diagnosis for the twenty-five most common diagnoses, annual operating costs, revenues, capital expenditures, and utilization for each nonfederal acute care hospital in this state, and the average charges by source of payment and level of service in each long-term care facility in this state.
3. Establish a uniform format for the collection of information on charges to patients.
4. Prepare an annual report comparing the cost of hospitalization by diagnosis in each nonfederal acute care hospital and comparing average charges by source of payment and by level of service in each long-term care facility in the state.

5. Establish procedures that assure public availability of the information required to make informed health care purchasing decisions.
6. Establish arrangements with the department of health, the department of human services, the commissioner of insurance, the workmen's compensation bureau, and the public employees retirement system to assure patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data, and to act in a manner which does not duplicate data collection activities of other state agencies.

SECTION 3. Publication of a directory of licensed physicians. Under the auspices of the health care data committee, the department of health in conjunction with the board of medical examiners shall publish an annual directory of physicians licensed to practice medicine in this state. The directory shall include for each physician the physician's name, practice location, telephone number, area of specialization, professional board certification status, and information whether the physician accepts medicare assignments. In a separate section of the directory, for those physicians who voluntarily submit the necessary information on a uniform form to be supplied by the department of health, the directory must include a schedule of fees charged for services representative of the physician's type of practice and specialization, including the physician's usual fees for brief service - new patient, limited service - new patient, intermediate service - new patient, brief service - established patient, limited service - established patient, intermediate service - established patient, comprehensive history - physical, house call - established patient, and up to five other services that the physician may wish to include.

SECTION 4. Administrative authority of health care data committee - Administrative support - Authority to acquire data. The health care data committee may adopt rules consistent with and necessary for the implementation of this Act. The committee shall establish working arrangements among other state agencies for the assurance of patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data to the public and to the state agencies in making more cost-effective health care purchasing decisions. The committee may require insurers, nonprofit health service corporations, health maintenance organizations, and state agencies to provide data required for the performance of the duties of the committee under this Act.

SECTION 5. Confidentiality of certain records - Immunity for providing information. The committee shall keep all records, data, and information that could be used to identify individual patients confidential. Reports for distribution by the committee or for publication must be prepared in a manner to reasonably assure exclusion of information that would identify any particular patient. Any person who provides information, data, reports, or records with respect to any patient to the health care data committee under this

Act is immune from liability for the act of furnishing the information.

SECTION 6. Fees for providing extraordinary data or reports. The department of health may by rule set fees for recovering the reasonable costs of providing data and reports, other than those set forth in this Act, to any person. Revenues derived from the fees must be deposited in the operating fund of the department of health.

SECTION 7. Civil penalty. Any person violating this Act or violating any rule adopted by the health care data committee is subject to a civil penalty not to exceed five hundred dollars per day of violation. The department of health with the assistance of the attorney general may prosecute an action in district court to recover any civil penalty under this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 293

SENATE BILL NO. 2336
(Senators Waldera, Mushik)
(Representatives Wentz, J. DeMers)

ADULT PROTECTIVE SERVICES DEMONSTRATION PROJECT

AN ACT to provide for the establishment of an adult protective services demonstration project to be developed and managed by the department of human services; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Abuse" means the willful and unjustifiable infliction of pain, injury, or mental anguish, or the deprivation of food, shelter, clothing, health care, or other necessary services.
2. "Department" means the department of human services.
3. "Exploitation" means the wrongful use of a vulnerable adult or the property of a vulnerable adult.
4. "Neglect" means the inability or the negligent failure of a person to supply a vulnerable adult with food, shelter, clothing, health care, supervision, or other necessary services.
5. "Self-neglect" means the inability of a vulnerable adult to provide food, shelter, clothing, health care, or services necessary to maintain the adult's mental or physical health.
6. "Vulnerable adult" means an adult who is impaired because of mental illness, developmental disability, physical illness or disability, or chronic use of drugs or alcohol to the extent that the adult is unable or unlikely to report to or seek the help of proper authorities in situations of abuse, neglect, self-neglect, or exploitation.

SECTION 2. Adult protective service demonstration program. The department shall develop, design, and manage the adult protective service demonstration program. No state funds may be expended for the development, design, or management of the adult protective service demonstration program. However, the department may apply for and accept any funds, gifts, or grants made available for the program by any agency or department of the federal government or any private agency or individual. The department shall involve other agencies and associations in the development of the demonstration program. The department shall develop the adult protective service demonstration program pursuant to these objectives:

1. Identification of the number of vulnerable adults in the project area who are abused, neglected, exploited, or in a state of self-neglect.
2. Identification of basic and emergency services necessary for vulnerable adults.
3. Identification of existing services available to vulnerable adults.
4. Identification of services not being provided to vulnerable adults in the project area.
5. Development of cost estimates and the design of a statewide model for the delivery of services to vulnerable adults.

SECTION 3. Reporting and investigations. The department shall encourage the voluntary reporting of the abuse, neglect, self-neglect, and exploitation of vulnerable adults and shall implement policies for the receipt and investigation of reports made to the department.

SECTION 4. Immunity from liability. Any person, other than the alleged violator, participating in good faith in the making of a report, conducting an investigation, or taking photographs or x-rays in connection with a report made pursuant to this Act, is immune from any civil or criminal liability that might otherwise result.

SECTION 5. APPROPRIATION. There is hereby appropriated to the department of human services any moneys that may become available pursuant to section 2 of this Act for the purpose of developing, designing, and managing the adult protective service demonstration program for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 294

SENATE BILL NO. 2372
(Senators Mathern, Dotzenrod)
(Representatives C. Nelson, Gorman)

ABANDONED BURIAL PLOTS

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to reversion of title to burial plots after abandonment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Title to burial plots reverts after sixty years - Procedure - Abandonment. Any entity owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies may use the procedures in this section to reinvest itself with the title to a portion of a cemetery which was conveyed by deed to a person but which has not been used for purposes of burial for more than sixty years.

1. The entity owning, conducting, or maintaining a cemetery may pass a resolution demanding that the owner of a portion of a cemetery which has been unused for more than sixty years express an interest in the cemetery plot. The entity must personally serve a copy of its resolution on the owner in the same manner as personal service of process in a civil action. The resolution must notify the owner that the owner must, within sixty days after service of the resolution on the owner, express an interest in retaining the unused cemetery plot.
2. If the owner of the unused plot cannot personally be served with a copy of the resolution of the entity because the owner cannot be found in this state or for any other valid reason, the entity must publish its resolution for three consecutive weeks in the official newspaper of the county where the cemetery is located and must mail a copy of the resolution within fourteen days after the third publication to the owner's last known address.

3. If within sixty days after personal service or after publication of the board's resolution is completed, the owner or person with a legal interest in the cemetery plot fails to express an interest in retaining the unused cemetery plot, the owner's rights are terminated and title to that person's plot reverts to the entity owning, conducting, or maintaining the cemetery.

4. It is a conclusive presumption that an owner has abandoned a cemetery plot if for a period of more than sixty years the owner has not used any portion of the lot for purposes of burial and has not made provision for care of the lot beyond that provided uniformly to all lots within the cemetery and if the owner has failed to express an interest in retaining the cemetery plot after notice provided in this Act.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 295

HOUSE BILL NO. 1522
(Tomac)

GRAVE OPENING

AN ACT to amend and reenact section 23-06-27 of the North Dakota Century Code, relating to opening any grave or place of burial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-27. **Unlawfully opening place of burial - Penalty - Exceptions.** A person is guilty of a class C felony who, without authority of law, opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either:

1. To remove the dead body of a human being, or any part thereof; or
2. To steal the coffin, or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles buried with the same.

This section does not apply to the inadvertent opening of burial mounds, unregistered historic graves, prehistoric graves, or prehistoric cemeteries when such remains would not appear to a reasonable person to be human, or when the state department of health and the state historical board have been notified of such discovery and such unregistered human remains shall be studied and reinterred pursuant to rules adopted by the state department of health and the state historical board. This section also does not apply to situations in which the state department of health and the state historical board are notified of the need to disinter and move prehistoric human remains which are recorded with the state historical board in order to prevent the destruction of such graves by actions including, but not limited to, the construction of highways, dams, reservoirs, coal mines, power generation and transmission facilities, pipelines, farming practices, and other developments. Where feasible, such developments should avoid disturbance of prehistoric graves. In these situations such recorded human remains must be studied and reinterred pursuant to rules adopted by the state department of health and the state historical board.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 296

SENATE BILL NO. 2292
(Senators Lashkowitz, David)
(Representative Oban)

ANATOMICAL GIFT REQUESTS

AN ACT to create and enact a new section to chapter 23-06.1 of the North Dakota Century Code, relating to establishing procedures for the request of anatomical gifts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Request for consent to an anatomical gift - Protocol - Exceptions. When death occurs, or is deemed to be imminent, in a hospital to a patient who has not made an anatomical gift, the hospital administrator or a designated representative, other than a person connected with the determination of death, shall request the person described in subsection 2 of section 23-06.1-02, in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indication by the decedent or one in a prior class, to consent to the gift of organs of the decedent's body as an anatomical gift. The hospital must develop a protocol to include the training of employees or other persons designated to make the request, the procedure to be followed in making it, and a form of record identifying the person making the request, and the response and relationship to the decedent. The protocol must encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding anatomical gifts.

If, based upon medical criteria, a request would not yield an anatomical gift which would be suitable for use, there is an authorized exception to the request required by this section.

If, based upon the attending physician's special and peculiar knowledge of the decedent or the circumstances surrounding the death of the patient, the attending physician determines that a request will not be made for an anatomical gift, that determination must be noted in the patient's medical record. Such a determination is an exception to the request required by this section.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 297

HOUSE BILL NO. 1132
(Committee on Transportation)
(At the request of the Highway Department)

PHYSICAL OR MENTAL DISORDER REPORTS

AN ACT to amend and reenact section 23-07-01.1 of the North Dakota Century Code, relating to the agency to which certain physical and mental disorders must be reported.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-01.1. Reporting of physical or mental disorders. The state department of health shall define disorders characterized by lapses of consciousness, gross physical or mental impairments for the purposes of the reports hereinafter referred to:

1. All physicians may report immediately to the state ~~department of health highway department~~ in writing, the name, date of birth and address of every person fourteen years of age or over coming before him for examination, attendance, care or treatment when there is reasonable cause to believe that such person due to physical or mental reason is incapable of safely operating a motor vehicle or diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments.
2. ~~The state department of health shall report to the state highway commissioner the name, birth date and address of every person reported under the provisions of subsection 1. Such reports to be furnished to the state highway commissioner upon receipt.~~
- 3- Such reports as required in this section shall be for the information of the state department of health and the state highway commissioner in determining the eligibility of any person to operate a motor vehicle on the highways of this state and shall be kept confidential and not

divulged to any person or used as evidence in any trial, except that the reports may be admitted in proceedings under sections 39-06-33 and 39-06-39.

- 4- 3. The physician-patient privilege provided for by rules 501 and 503 of the North Dakota Rules of Evidence may not be asserted to exclude evidence regarding the mental or physical incapacity of a person to safely operate a motor vehicle in the reports as required under the provisions of this section.
- 5- 4. Any physician who fails to make a report or who in good faith makes a report, gives an opinion or recommendation pursuant to this section or participates in any proceeding founded upon this section shall be immune from any liability, civil or criminal, that might otherwise be incurred, as a result of such report, except for perjury.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 298

HOUSE BILL NO. 1304
(Representatives Graba, Schneider, Frey)
(Senator Ingstad)

INFECTIOUS DISEASE EXPOSURE

AN ACT to provide for notification of firemen and emergency medical technicians after exposure to infectious diseases; and to amend and reenact subdivision d of subsection 12 of section 65-01-02 of the North Dakota Century Code, relating to definition of diseases fairly traceable to employment under the workmen's compensation law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 and 2 of this Act, unless the context or subject matter otherwise requires:

1. "Emergency medical technician" means a person trained and authorized by law or rule to render emergency medical assistance or treatment.
2. "Infectious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold.
3. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.

SECTION 2. Notification of infectious diseases. A licensed facility, medical clinic, or physician's office that receives a patient who is subsequently diagnosed as having an infectious disease shall notify the employer of any fireman or emergency medical technician who transported the patient to the facility, or who administered care to the patient during transportation, of the employee's exposure to the infectious disease. The notification must be made within forty-eight hours of confirmation of the diagnosis. The employer shall request the employee to contact the licensed facility to determine the infectious disease to which the employee has been exposed and to receive the appropriate medical direction for dealing with the infectious disease. Notification

must be conducted in a manner that protects the confidentiality of the patient and fireman and emergency medical technician.

* SECTION 3. AMENDMENT. Subdivision d of subsection 12 of section 65-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Provided However, any condition or impairment of health of a full-time paid fireman or law enforcement officer caused by lung or respiratory disease, hypertension, ~~or~~ heart disease, or exposure to infectious disease as defined by sections 1 and 2 of this Act, resulting in total or partial disability or death shall be is presumed to have been suffered in the line of duty and shall. The condition or impairment of health may not be attributed to any disease existing prior to such before that total or partial disability or death unless the contrary be is shown by competent evidence, provided, further, that such. A full-time paid fireman or law enforcement officer shall have is not eligible for the benefit provided under this subdivision unless that full-time paid fireman or law enforcement officer has completed two years of continuous service and have has successfully passed a physical examination which examination fails to reveal any evidence of such a condition.

Approved March 27, 1987

Filed March 30, 1987

* NOTE: Section 65-01-02 was also amended by section 1 of House Bill No. 1303, chapter 750.

CHAPTER 299

SENATE BILL NO. 2553
(Senator Mushik)
(Representative Kretschmar)
(Approved by the Committee on Delayed Bills)

LIMITED RESTAURANT LICENSES

AN ACT to amend and reenact sections 23-09-01, 23-09-16, and 23-09-17 of the North Dakota Century Code, relating to hotels, lodginghouses, restaurants, and boardinghouses and to limited restaurant licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals⁷.
2. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished and includes a limited restaurant restricted to a specified menu.
3. "Lodginghouse" includes every building or structure, or any part thereof, with accommodations for four or more persons, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more.
4. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or

* NOTE: Section 23-09-01 was also amended by section 27 of Senate Bill No. 2278, chapter 263.

held out to the public as a place where food is furnished to regular boarders for periods of one week or more.

5. "Proprietor" includes the person in charge of a restaurant, hotel, boardinghouse, or lodginghouse, as the case may be, whether as owner, lessee, manager, or agent.

SECTION 2. AMENDMENT. Section 23-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-16. License - Application. Before any hotel, lodginghouse, restaurant, or boardinghouse may be operated in this state, it must be licensed by the state laboratories department. A limited restaurant license may be issued by the department to a licensee and a limited restaurant is restricted to a specified menu. The department may adopt rules relating to limited restaurants. Application for license shall be made to the department during December of every year, or prior to the operating of the hotel, restaurant, lodginghouse, or boardinghouse, as the case may be. Such application shall be in writing on forms furnished by the department, and shall be accompanied by the required fee.

SECTION 3. AMENDMENT. Section 23-09-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-17. License fees. The following annual license fees shall be paid to the state laboratories department by proprietors of hotels, restaurants, boardinghouses, and lodginghouses:

1. For a restaurant, limited restaurant, or boardinghouse, ~~five~~ ten dollars.
2. For a hotel or lodginghouse containing at least four but not more than ten sleeping rooms, five dollars.
3. For a hotel or lodginghouse containing more than ten sleeping rooms and not more than twenty sleeping rooms, ten dollars.
4. For a hotel or lodginghouse containing more than twenty sleeping rooms and not more than fifty sleeping rooms, twenty dollars.
5. For a hotel or lodginghouse containing fifty-one sleeping rooms or more, forty dollars.

The department shall waive all or a portion of the license fee for any restaurant, limited restaurant, or boardinghouse that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 300

HOUSE BILL NO. 1373
(Representatives Oban, Lindgren, W. Williams)
(Senators Heinrich, Nalewaja)

MOBILE HOME PARK EMERGENCIES

AN ACT to create and enact a new section to chapter 23-10 of the North Dakota Century Code, relating to a requirement for a procedure to respond to emergencies and complaints in certain mobile home parks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Requirement of response procedures in certain mobile home parks. The owner of a mobile home park that contains at least ten mobile homes shall establish a procedure for responding to emergencies and complaints by tenants with respect to the mobile home park. The procedure must include the ability to reach a person who has the authority to perform, or direct the performance of, duties imposed on the owner under this chapter. The procedure must be in writing and a copy must be provided to the tenants.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 301

HOUSE BILL NO. 1272
 (Representatives Rydell, L. Hanson, Koland)
 (Senators Bakewell, Stromme, Shea)

PUBLIC SMOKING RESTRICTIONS

AN ACT to create and enact two new sections to chapter 23-12 of the North Dakota Century Code, relating to enforcement of public smoking restrictions; and to amend and reenact sections 23-12-09, 23-12-10, and 23-12-11 of the North Dakota Century Code, relating to designated smoking areas in places of public assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-12-09. Smoking in places of public assembly - Definitions. As used ~~in In~~ sections 23-12-09 through 23-12-11, "~~place of public assembly~~" means unless the context or subject matter otherwise requires:

1. "Place of public assembly" means:

- a. Enclosed theaters, except the lobby; auditoriums; gymnasiums; elevators; libraries; vehicles used in public transportation; rooms in which persons are confined as a matter of health care, including but not limited to the waiting room, restroom, lobby, or hallway of a hospital, nursing home, rest home, or other health care institution or facility, except the room in a health care facility serving as the residence of the person living in such facility and waiting areas in all public transportation terminals.
- 2- b. All buildings and Any building or other enclosed structures structure owned or leased by the state, its agencies, or political subdivisions, including but not limited to hospitals and state institutions for the mentally retarded and the mentally ill, and all public education buildings, except rooms within these buildings used primarily as the residences of students or other persons affiliated with the university or

college, office buildings, libraries, and vehicles used in public transportation.

- 3- c. Each portion of a building or enclosed structure that is not included in this subsection 1 or 2 is a place of public assembly if it has the seating capacity for fifty or more persons and is available to the public, including but not limited to restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, regardless of whether the establishments serve alcoholic beverages.

The term does not include private, enclosed rooms of residence, establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises, including private and fraternal organizations, or areas used for the service of alcoholic beverages and which are physically separate rooms within food service establishments.

2. "Smoke-drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or other smoking equipment in a place of public assembly outside a designated smoking area.
3. "Smoking" means carrying a lighted cigar, cigarette, pipe, or any other lighted smoking equipment.

SECTION 2. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-12-10. Nonsmoking Designation of smoking areas designated. For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of the persons not smoking, in every place of public assembly there shall be is an area where smoking is not permitted, which shall be outside of designated a no-smoking area. The designation shall be made by the person with general supervisory responsibility over the place of public assembly before the place of public assembly is next or first made available to the public after July 1, 1977 smoking areas. Smoking areas must be designated by the proprietor or other person with general supervisory responsibility over the place of public assembly, except in a place in which smoking is prohibited by the state fire marshal, by other governing law, rule, or ordinance, or by corporate or private policy. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking

area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

SECTION 3. A new section to chapter 23-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Responsibility of proprietors. The proprietor or other person with general supervisory responsibility over a place of public assembly shall post an appropriate sign in any designated smoking area.

SECTION 4. A new section to chapter 23-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Complaints and enforcement. The state department of health is designated to receive reports or complaints from any person regarding violations of sections 23-12-09 through 23-12-11. State agencies with statutory jurisdiction over places of public assembly may enforce sections 23-12-09 through 23-12-11. These agencies include the fire marshal department, laboratories department, department of health, department of human services, and director of institutions. The agencies may mutually agree as to the manner in which enforcement is to be accomplished, and may amend their administrative rules to ensure compliance with sections 23-12-09 through 23-12-11.

Authorities other than state agencies may conduct inspections and report violations to state agencies, or enforce smoking policies, rules, or ordinances more stringent than those contained in sections 23-12-09 through 23-12-11.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-12-11. Penalty. Any proprietor or other person who shall smoke in an area designated for nonsmoking as provided in with general supervisory responsibility over a place of public assembly who willfully fails to comply with sections 23-12-09 through 23-12-11, or who has general supervisory responsibility and fails to designate a nonsmoking area, shall be and section 3 of this Act is subject to a fine not to exceed one hundred dollars per violation.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 302

SENATE BILL NO. 2394
(Todd, Nelson)

SMOKE DETECTORS

AN ACT to amend and reenact section 23-13-15 of the North Dakota Century Code, relating to duties of landlords and tenants with respect to smoke detectors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-13-15. Smoke detection systems for residential rental property - Penalty. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems to owners of residential rental properties. A system installed in a single family rental dwelling must be maintained and inspected by the tenant occupying the single family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the system upon the occupancy of each new tenant. The landlord may require the tenant to sign a certificate stating that the system is in proper working condition, on taking occupancy, if that is the case. The tenant is responsible for maintaining the system during the tenant's occupancy.

Nothing in this section shall be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.

Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 303

SENATE BILL NO. 2240
(Committee on Political Subdivisions)
(At the request of the Attorney General)

FIRECRACKER COMPOSITION

AN ACT to amend and reenact subsection 9 of section 23-15-01 of the North Dakota Century Code, relating to composition of firecrackers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 23-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Soft shell firecrackers not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter; total pyrotechnic composition not to exceed ~~two grains~~ fifty milligrams each in weight.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 304

SENATE BILL NO. 2191
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Health)

HOSPITAL EXPANSION CERTIFICATE OF NEED

AN ACT to amend and reenact sections 23-17.2-01, 23-17.2-02, 23-17.2-03, 23-17.2-04, 23-17.2-05, and 23-17.2-09 of the North Dakota Century Code, relating to the certificate of need for expansion of hospital facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-17.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-01. Review and evaluation of proposed capital expenditures, new ~~institutional~~ or expanded health services, and major medical equipment by or on behalf of a health care facility or service - Public interest. It is declared to be the public policy of this state:

1. That the capital expenditures, new ~~institutional~~ or expanded health services, and acquisition of major medical equipment by or on behalf of health care facilities ~~and health care services~~ shall be accomplished in a manner which is orderly, economical, and consistent with the effective development of necessary and adequate means of providing for the health care of the people of North Dakota, and ~~to avoid a~~ which avoids wasting of health care dollars.
2. That the general welfare and the protection of the lives, health, and property of the people of this state require that the type, level, and kind of care ~~needed in~~ proposed to be offered resulting from capital expenditures, new ~~institutional~~ or expanded health ~~service~~ services, and acquisition of major medical equipment by or on behalf of health care facilities ~~and services within this state~~ be subject to review and evaluation in order that proper facilities are made available for such ~~care, within the economic means of this state, the type, level, and kind of care necessary for~~ the continued well-being and comfort of

the patients of such health care facilities and ~~services and to ensure that capital expenditures, new institutional health services, and acquisition of major medical equipment by or on behalf of~~ in order that such health care facilities are not expanded which to exceed the needs of patients or of persons in the area to be served or to exceed the economic means of this state.

SECTION 2. AMENDMENT. Section 23-17.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-02. Definitions. As used in this chapter, unless otherwise indicated by the context:

1. "Ambulatory surgical facility" means a facility licensed ~~pursuant to the under~~ North Dakota Administrative Code chapter 33-03-01.
2. "Appearance" ~~shall mean~~ means a notice in writing filed by any interested person notifying the health council of his that person's interest in any application pending under this chapter.
3. "Bed capacity" means space as defined by the department ~~pursuant to regulations promulgated under rules adopted in the department's licensing programs for inpatient facilities.~~
4. "Capital expenditure" means an expenditure ~~of seven hundred fifty thousand dollars,~~ regardless of the financial mechanism utilized, made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
5. "Construction" means any erection of a new building, new addition to, modification, alteration, renovation, conversion of any existing building, modernization or improvement made by or on behalf of any health care facility. Construction shall not include changes required by state or federal health and safety regulatory agencies.
6. "Department" means the North Dakota state department of health.
7. "Expenditure minimum"; ~~when used in connection with annual operating costs, means three hundred thousand dollars.~~
8. "Health care facility" means those health care facilities licensed by the department or certified by the department ~~pursuant to under~~ the federal Social Security Act as amended and so listed in department rules under North Dakota Administrative Code article 33-09 such as including

but not limited to hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but not including clinical laboratories which under title XVIII of the federal Social Security Act meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.

- 9- 8. "Health council" means the state health council of the North Dakota state department of health.
- ~~10-~~ 9. "Health maintenance organization" means a public or private organization, organized under the laws of this state and as defined in North Dakota Administrative Code article 33-09 section 26.1-18-01.
- ~~11-~~ 10. "Health services" means institutionally related (i.e. diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.
- ~~12-~~ 12. "Health systems agency" means a conditionally or fully designated health systems agency designated pursuant to section 1515 of the National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641 as amended) and Title 42, Code of Federal Regulations-
- ~~13-~~ 13. "Incremental operating costs" means the financial requirements necessary to operate an activity associated with capital expenditures for new institutional health services and operating costs associated with the acquisition of major medical equipment. Operating costs are calculated in accordance with department regulations-
- ~~14-~~ 11. "Incurring an obligation" means an obligation for a capital expenditure by or on behalf of a health care facility if any of the following apply:
- a. When a A contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or.
 - b. When the The governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or.
 - c. In the case of donated property, on the date on which the gift is completed under applicable state law.
- ~~15-~~ 12. "Inpatient" means a patient who has been formally admitted at least overnight to a hospital or other health facility which is responsible for his the patient's room and board

for the purpose of receiving diagnostic or other health services.

- ~~16-~~ 13. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs more than five hundred thousand dollars. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than five hundred thousand dollars, the cost of designs, plans, working drawings, specifications, and other activities essential to placement, to acquiring the equipment and making it operational shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.
14. "Operating costs" means the financial requirements necessary to effect a proposed activity or health service which under generally accepted accounting principles is not properly capitalized.
- ~~17-~~ 15. "Patient" means a person who is suffering from mental illness, acute or chronic illness or injury, or who is convalescent and who is in need of medical and nursing care on a continuing basis, or who is in need of obstetrical or other medical or nursing care.
- ~~18-~~ 16. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency as stated herein.
- ~~19-~~ 17. "Public body" means the state of North Dakota, and any county or municipal corporation.
- ~~20-~~ 18. "Public funds" shall include all funds derived from taxation, fees, penalties, sale of bonds, or from any other source which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporations and for whatever purpose to be expended of which a public corporation or the state shall have legal custody. They shall include the funds of which any board, bureau, commission, or individual, created or authorized by public and state law, is authorized to have control as the legal custodian for any purpose whatsoever, whether such funds were derived from general or special

taxation or the assessment of persons or corporations for a specific purpose.

- 21- 19. "Public institution" means any hospital or related medical facility under the establishment and control of any public body.
- 22- 20. "State health plan" means the document prepared and reviewed and revised as necessary (but at least annually) by the statewide health coordinating council pursuant to section 1524 of the National Health Planning and Resources Development Act of 1974 {Pub. L. 93-641 as amended} by the health council.
- 23- "Statewide health coordinating council" means the body established pursuant to section 1524 of the National Health Planning and Resources Development Act of 1974 {Pub. L. 93-641 as amended} to advise the department with regard to provisions of that Act.

SECTION 3. AMENDMENT. Section 23-17.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-03. Scope of coverage of certificate of need program - Health maintenance organization exception. The certificate of need program required under this chapter provides for the following:

1. The department, pursuant to this chapter and rules of the health council, must review proposals subject to this chapter and must approve, disapprove, or revoke the certificate of need, as appropriate. The certificate of need program applies to:
 - a. The obligation by or on behalf of a health care facility of any capital expenditure of seven hundred fifty thousand dollars or more (other than to acquire an existing facility). The capital expenditure must include the costs of designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment.
 - b. The addition or expansion of a health care service by or on behalf of a health care facility which was not beyond that which was offered within the previous twelve-month period before the month in which the health service would be offered which is associated with either a capital expenditure or and entails an annual operating cost of at least three hundred thousand dollars; or the termination of a health service which is associated with any effected by a capital expenditure of seven hundred fifty thousand dollars or more.

- c. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility the capital expenditure for which is five hundred thousand dollars or more or the annual operating cost for which is three hundred thousand dollars or more. In determining whether major medical equipment costs more than five hundred thousand dollars, the cost of designs, plans, working drawings, specifications, and other activities essential to placement, to acquiring the equipment and making it operational must be included. If the equipment is acquired at less than fair market value, the term "cost" includes the fair market value.
- d. The acquisition by any person of major medical equipment not owned by or located in a health care facility the capital expenditure for which is five hundred thousand dollars or more or the annual operating cost for which is three hundred thousand dollars or more, if the department finds that the equipment will be used primarily to provide services to persons who are admitted patients in a health care facility. This does not include use of equipment on a temporary basis as in the case of a natural disaster, a major accident, or equipment failure.
- e. The obligation of a capital expenditure of seven hundred fifty thousand dollars or more by any person to acquire an existing health care facility if a notice of intent is not received at least thirty days prior to entering into a contract for the obligation or the department finds that the services or bed capacity of the facility will be changed.
- f. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if such acquisition would have been subject to review if purchased. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would exceed the expenditure minimum have been subject to review.

However, health care facilities and health care services, for the purposes of this chapter, do not include health maintenance organizations, as defined in section 26-1-18-01, when the health maintenance organization, or other entity, is engaged in activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations, or planning projects for the establishment of health maintenance organizations or for the significant expansion of the membership of, or areas served by, health maintenance organizations, or initial development of health maintenance organizations. "Planning projects" and

"initial development" mean those activities as defined in the Health Maintenance Organization Act of 1973, as amended [~~Pub. L. 94-460, 90 Stat. 1948, 1950, 1955; and Pub. L. 95-559, 92 Stat. 2131, 2134, 42 U.S.C. 300 e-3~~].

2. Upon a decision by the state health council to issue a certificate of need, the certificate shall specify the maximum amount of capital expenditures which may be obligated under such certificate.
3. The state health council shall prescribe by regulation rule the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.
4. Any state agency construction project subject to the provisions of this chapter, the determination of need established through legislative procedure, finalized by appropriation, shall be accepted by the state health council without any formal reviews.

SECTION 4. AMENDMENT. Section 23-17.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-04. Certificate of need.

1. No person, subject to the scope of coverage under section 23-17.2-03, shall incur a capital expenditure or institute or expand a new health service or acquire major medical equipment without first obtaining a certificate of need.
2. Each decision of the department (or the appropriate administrative or judicial review body) to issue a certificate of need must be consistent with the state health plan and other criteria promulgated by the state health council, except in emergency circumstances that pose an imminent threat to public health.
3. Subsequent reviews. A proposed change in a project associated with a capital expenditure for which the state health council has previously issued a certificate of need will require review if the change is proposed within one year after the date the activity for which the expenditure was approved is undertaken. This applies to changes associated with capital expenditures that were subject to review under this chapter. A review is required under this chapter whether or not a capital expenditure is associated with the proposed change.
4. Existing facilities. If a person acquires an existing health care facility without a certificate of need and

proposes to change within one year after the acquisition the services or bed capacity of the facility, the proposed change must be reviewed if it would have required review under this chapter.

- 5- Leases, donations, and transfers. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if the acquisition would be subject to review under this chapter if made by purchase. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review.
- 6- In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the certificate of need program applies only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services.

SECTION 5. AMENDMENT. Section 23-17.2-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-05. Health council to promulgate adopt rules and regulations - Application - Criteria for certification. The health council is hereby empowered to promote and execute the purposes contemplated by this chapter including but not limited to the following activities:

1. The development of an application form.
2. The promulgation of such rules and regulations as may be required for Pub. L. 93-641 as amended.
- 3- The establishment of criteria for review as required by Pub. L. 93-641 as amended.
- 4- 3. The establishment of roles of the department, state health coordinating council, and health system agencies in the administration of the certification program as may be required for Pub. L. 93-641 as amended.
- 5- 4. The establishment of schedules for submitting applications, types of reviews as well as time frames and limitations.
- 6- 5. Purview determinations with regard to all of the following:

- a. Obligations of capital expenditures;_
- b. The offering of new ~~institutional~~ or expanded health services;_ and_
- c. The acquisition of major medical equipment.

7- 6. When The use of special reviews will be utilized because of due to special circumstances found with respect to proposals subject to this chapter.

~~The health council shall seek the advice of the health systems agencies in these activities.~~

* SECTION 6. AMENDMENT. Section 23-17.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-09. Application for certificate of need. Applicants for certificate of need shall file notification of intent and applications under oath with the department upon forms prescribed. Notification of intent and applications shall be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a public institution by the head of such governmental unit or agency having jurisdiction over it. Notification of intent and applications shall set forth the full name and address of the owner of the institution for which certificate of need is sought, the names of the persons in control thereof, and such additional information as the department may require including affirmative evidence of ability to comply with licensing or certification requirements when ~~proposel~~ implemented. Applicants shall comply with criteria of rules and ~~regulations~~ as set forth therein. The department shall consider the application and determine from its findings whether such application qualifies the applicant for certification of need under criteria as set forth in the rules and ~~regulations~~. The determination shall be made after receipt of ~~recommendations~~ from the health systems agency in which the applicant is located and the determination shall be communicated to the facility or its owners or operators, the ~~respective health systems agency~~, and all persons filing an appearance immediately after being made. A notice of intent must be filed with the department when a health care facility is ~~acquired~~.

Approved April 1, 1987

Filed April 2, 1987

* NOTE: Section 23-17.2-09 was also amended by section 7 of House Bill No. 1006, chapter 6.

CHAPTER 305

HOUSE BILL NO. 1099
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Health)

RADIATION INFORMATION

AN ACT to create and enact a new section to chapter 23-20.1 of the North Dakota Century Code, relating to confidentiality of information regarding ionizing radiation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality of records. Any record, report, or information obtained under this chapter must be available to the public unless confidentiality is requested in writing to the department, a notice of opportunity for public hearing pursuant to chapter 28-32 is issued by the department in regard to the request, and a satisfactory showing made to the department that confidentiality be granted. Information will only be deemed confidential by the department if it:

1. Is required in order to protect trade secrets, or
2. Is required in order to protect medical and individual radiation exposure files, the disclosure of which would constitute a clear invasion of personal privacy.

In the event of a satisfactory showing, the department shall consider the record, report, information, or portion thereof, confidential in the administration of this chapter. Nothing in this section may be construed to prevent disclosure of any report or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local laws, or when relevant in any proceeding under this chapter. Air emissions data, discharges to the land, discharges to surface and ground waters, and the location and identification of any waste materials may not be construed as confidential information.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 306

HOUSE BILL NO. 1245
(Committee on Natural Resources)
(At the request of the Department of Health)

UNDERGROUND STORAGE

AN ACT to create and enact sections 23-20.3-04.1 and 23-20.3-04.2 of the North Dakota Century Code, relating to establishing an underground storage tank program; and to amend and reenact sections 23-20.3-01, 23-20.3-02, 23-20.3-03, 23-20.3-04, subsection 2 of section 23-20.3-05, sections 23-20.3-06, 23-20.3-07, 23-20.3-08, and 23-20.3-10 of the North Dakota Century Code, relating to hazardous waste management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-20.3-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-01. Declaration of purpose. It is hereby declared to be the purposes of this chapter to:

1. Protect human health and the environment from the effects of the improper, inadequate, or unsafe past or present management of hazardous waste and underground storage tanks.
2. Establish a program to regulate hazardous waste from the time of generation through transportation, storage, treatment, and disposal.
3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as preferable alternatives to landfill disposal.
4. Assure the safe and adequate management of hazardous waste with a minimum of hazardous waste disposal sites within the state.
5. Establish a program to regulate underground storage tanks.

6. Promote reduction of surface and ground water contamination resulting from leaking underground storage tanks.

* SECTION 2. AMENDMENT. Section 23-20.3-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-02. Definitions. When used in this chapter:

1. "Department" means the North Dakota state department of health charged with the administration and enforcement of this chapter.
2. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.
3. "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.
4. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.
5. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity.
6. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
7. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of

* NOTE: Section 23-20.3-02 was also amended by section 1 of Senate Bill No. 2547, chapter 307.

hazardous waste during its transportation from the site of generation to the site of storage, treatment, or disposal.

8. "Owner" means, in the case of an underground storage tank:
 - a. In use on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
 - b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use.
9. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, or other legal entity, state, municipality, commission, political subdivision of a state, interstate body, or federal department, agency, or instrumentality.
10. "Regulated substance" means:
 - a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act, as amended.
 - b. Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit [16 degrees Celsius] and fourteen and seven-tenths pounds [6.66 kilograms] per square inch [6.45 square centimeters] absolute).
11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.
- ~~9-~~ 12. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.
- ~~10-~~ 13. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
- ~~11-~~ 14. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical,

chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such wastes nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

- ~~12-~~ 15. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility where hazardous waste has been generated.
16. "Underground storage tank" means any one or combination of underground tanks, including underground pipes connected to an underground tank, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to it, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations adopted under this chapter include:
- a. Farm or residential tanks of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes.
 - b. Tanks used for storing heating oil for consumptive use on the premises where stored.
 - c. Septic tanks.
 - d. A pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.
 - e. Surface impoundments, pits, ponds, or lagoons.
 - f. Storm water or wastewater collection systems.
 - g. Flow-through process tanks.
 - h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
 - i. Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft, or

tunnel if the storage tank is situated upon or above the surface of the floor.

- 13- 17. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Clean Water Act, as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977.

SECTION 3. AMENDMENT. Section 23-20.3-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-03. Powers and duties of the department. The department shall have the responsibility for the administration and enforcement of this chapter. It shall have the power and its duties shall be to:

1. Administer the state hazardous waste management program and underground storage tank programs pursuant to provisions of this chapter.
2. Survey hazardous waste generation and management practices in the state.
3. Prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations governing the management of hazardous waste and underground storage tanks.
4. Enter into agreements or letters of understanding with other local, state, or federal agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks in order to promote consistency in enforcement and to avoid duplication in regulation.

SECTION 4. AMENDMENT. Section 23-20.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-04. Hazardous waste regulations. Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, promulgate and may revise as appropriate:

1. Regulations for determining whether any waste is hazardous.
2. Regulations which prescribe procedures for generators of hazardous waste.
3. Regulations for the issuance of permits for the storage, treatment, and disposal of hazardous waste in an environmentally sound manner, utilizing best scientific and engineering judgment.
- 3- 4. Regulations providing procedures under which the department shall issue, renew, modify, suspend, revoke, or deny such permits as may be required by this chapter. The regulations shall provide that no permit shall be revoked until the department has provided the affected party with written notice of the intent of the department to revoke the permit and the reasons for such revocation and with an opportunity for a hearing.
- 4- 5. Regulations for the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.
- 5- 6. Regulations for the transportation, containerization, and labeling of hazardous wastes, which shall be consistent with those issued by the United States department of transportation and the North Dakota public service commission and the North Dakota motor vehicle department.
- 6- 7. Regulations providing procedures and requirements for a manifest system.
- 7- 8. Regulations which prescribe procedures and requirements for the following:
 - a. Recordkeeping.
 - b. Reporting.
 - c. Sampling.
 - d. Performing analysis.
 - e. Monitoring.
- 8- 9. Regulations requiring that the owner or operator of any hazardous waste treatment, storage, or disposal facility demonstrate evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to human health and the environment.

- 9- 10. Any other regulations necessary to carry out the purposes of this chapter.

SECTION 5. Section 23-20.3-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-20.3-04.1. Underground storage tank regulations. Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, adopt:

1. Regulations for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
2. Regulations for maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. Regulations for reporting of any releases and corrective action taken in response to a release from an underground tank.
4. Regulations for taking corrective action in response to a release from an underground storage tank.
5. Regulations for the closure of tanks to prevent future releases of regulated substances into the environment.
6. Regulations for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.
7. Regulations establishing standards for installation of new underground storage tanks.
8. Regulations establishing standards for construction and performance of new underground storage tanks.
9. Regulations for notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. Regulations for a permit fee system to own, install, or operate an underground storage tank.

However, regulations adopted by the department may not be more stringent than applicable federal rules adopted pursuant to Public Law 98-616 [98 Stat. 3277; 42 U.S.C. 6991 et seq.].

SECTION 6. Section 23-20.3-04.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-20.3-04.2. Municipal underground storage tank ordinances. A county, city, or township may not enact and enforce an underground storage tank ordinance if the ordinance is more stringent than this chapter and the rules authorized to be adopted pursuant to this chapter.

SECTION 7. AMENDMENT. Subsection 2 of section 23-20.3-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any facility required to have a permit under this section which facility is in existence on July 1, 1981, or was in existence on the effective date of any statutory or regulatory change in the hazardous waste management that requires it to have a permit, and has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made.

SECTION 8. AMENDMENT. Section 23-20.3-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-06. Inspections - Right of entry. For the purposes of developing or enforcing any rule or regulation authorized by this chapter, or enforcing any requirement of this chapter any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place, facility, or site where wastes or substances which the department has reason to believe may be hazardous or regulated are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled.
2. Inspect and obtain samples of any waste or substance which the department has reason to believe may be hazardous or regulated, including samples from any vehicles in which wastes are being transported as well as samples of any containers or labels.
3. Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter.

SECTION 9. AMENDMENT. Section 23-20.3-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-07. Monitoring, analysis, and testing.

1. If the department determines, upon receipt of any information, that:
 - a. The presence of any hazardous waste, hazardous constituent, or regulated substance at a facility or site at which hazardous waste or regulated substance is, or has been, stored, treated, or disposed of; or
 - b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment,

the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.
2. In the case of any facility or site not in operation at the time a determination is made under subsection 1 with respect to the facility or site, if the department finds that the owner or operator of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste or regulated substance at such facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection 1.
3. Anyone who violates this section shall be subject to a civil penalty of five thousand dollars per day of violation.

SECTION 10. AMENDMENT. Section 23-20.3-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-08. Imminent hazard. Upon receipt of information that the past or present handling, storage, transportation, treatment, or disposal of any waste or regulated substance may present an imminent and substantial endangerment to health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 11. AMENDMENT. Section 23-20.3-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-10. Applicability. The hazardous waste provisions of this chapter do not apply to:

1. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production ~~of~~ of crude oil or natural gas or geothermal energy.
2. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
4. Cement kiln dust waste.

Except, that when a waste disposal site for any of the above wastes is to be closed, the owner or operator shall file a plat of the disposal site with the register of deeds of each county in which the facility is located, together with a description of the wastes placed therein.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 307

SENATE BILL NO. 2547
(Senators Lashkowitz, Redlin, Holmberg)
(Representatives Scherber, Shaft)
(Approved by the Committee on Delayed Bills)

HAZARDOUS WASTE DISPOSAL PERMITS

AN ACT to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to permits for commercial facilities for hazardous waste disposal; and to amend and reenact section 23-20.3-02 of the North Dakota Century Code, relating to definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-20.3-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-02. Definitions. When used in this chapter:

1. "Department" means the North Dakota state department of health charged with the administration and enforcement of this chapter.
2. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water including ground water.
3. "Commercial facility" means all contiguous land, structures, appurtenances, and improvements on the land used for treatment and disposal of hazardous waste received from offsite generators. Ownership of the offsite hazardous waste is different than the ownership of the processing facility and the wastes are processed for a fee or other consideration.
4. "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.

* NOTE: Section 23-20.3-02 was also amended by section 2 of House Bill No. 1245, chapter 306.

- ~~4-~~ 5. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.
- ~~5-~~ 6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity.
- ~~6-~~ 7. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- ~~7-~~ 8. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the site of generation to the site of storage, treatment, or disposal.
- ~~8-~~ 9. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, or other legal entity, state, municipality, commission, political subdivision of a state, interstate body, or federal department, agency, or instrumentality.
- ~~9-~~ 10. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.
- ~~10-~~ 11. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
- ~~11-~~ 12. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such wastes nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~12-~~ 13. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility where hazardous waste has been generated.

~~13-~~ 14. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Clean Water Act, as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977.

SECTION 2. A new section to chapter 23-20.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Commercial facility permits and ordinances. Counties and cities may issue permits for commercial facilities pursuant to section 23-20.3-05 and may enact and enforce commercial facility ordinances if the ordinances are equal to or more stringent than this chapter and the rules adopted under this chapter.

In addition to the requirements for obtaining a permit under this chapter, no person may construct, substantially alter, or operate any commercial facility nor may any person dispose of any hazardous waste without first obtaining a permit from the department and from the county, or if the commercial facility is located or proposed to be located within the territorial zoning authority of a city, the city. The department in conjunction with the governing body of the county or city where the commercial facility is located or proposed to be located shall hold a public hearing in the manner provided in subsection 8 of section 23-20.3-05.

Approved April 17, 1987

Filed April 17, 1987

CHAPTER 308

SENATE BILL NO. 2526
(Senator Yockim)
(Representative Haugen)

VECTOR CONTROL DISTRICT CHANGES

AN ACT to create and enact a new section to chapter 23-24 and a new subsection to section 23-24-01 of the North Dakota Century Code, relating to withdrawing from a vector control district and the definition of potential or emergency health hazards; and to amend and reenact subsection 4 of section 23-24-01, sections 23-24-03, 23-24-04, and 23-24-05, and subsection 1 of section 23-24-08 of the North Dakota Century Code, relating to the definition of public health vectors, orders modifying the boundaries of vector control districts, the expansion of vector control districts, boards of commissioners of vector control districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Public health vectors" means all species of mosquitoes and flies existing in such numbers as to be detrimental to human health and well-being.

SECTION 2. A new subsection to section 23-24-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Potential or emergency health hazard" means a potential or existing infestation by public health vectors that is detrimental to human health and well-being.

SECTION 3. A new section to chapter 23-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Petition for withdrawing from a vector control district - Hearing and investigation - Boundary modification. Any county, city, or township or portion of a county, city, or township may withdraw from a vector control district whenever a petition signed

by the governing body of the county, city, or township or at least twenty percent of the residents of the county, city, or township, or portion thereof, desiring to withdraw from the district, is approved by the state health council. Prior to approving a petition to withdraw from the district, the state health council shall fix a time and place for a public hearing on the petition. The place of the hearing must be convenient and accessible for a majority of the residents of the district. At least ten days prior to the date of the hearing, the state health council shall publish a notice of the hearing in at least one newspaper of general circulation in the district. Prior to the hearing the state health officer shall investigate the petition to withdraw and shall submit a report to the council. If the state health council finds that it is not feasible, desirable, or practical to allow the petitioning entity to withdraw from the district, it shall make an order denying the petition and state the reasons for its action. If the council finds that the petitioning entity is no longer benefited by being included within the boundaries of the district or if other reasons make the withdrawal of the petitioning entity desirable, proper, and necessary, it shall grant the petition and modify the boundaries of the district. No person may be a member of the board of commissioners if that person is no longer a resident of the vector control district after the boundaries have been modified. A new member must be appointed to replace any such member in the manner provided for original appointments.

SECTION 4. AMENDMENT. Section 23-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-03. Area to be included within district - How determined. The area or areas to be included in the district shall embrace contain the territory described in the petition for the creation or modification thereof. The However, the council, however upon its own motion or upon the request of the board of commissioners, shall consider and may include within the boundaries of the district, areas which may be benefited by being included therein. Upon a request by the board of commissioners to expand an existing district, the council shall hold a hearing and investigation and file any order expanding a district in a manner similar to that provided in sections 23-24-02 and 23-24-04.

SECTION 5. AMENDMENT. Section 23-24-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-04. Order establishing or modifying district. A certified copy of the order establishing or modifying a vector control district shall must be filed with the county auditor of each county within which any portion of the district lies and like copy of the order shall must be filed in the office of the secretary of state. The secretary of state shall make and issue to the council his certificate bearing the seal of the state of the due organization of such the district and shall record such the certificate and the order of the council establishing or modifying the district. Such The certificate of the secretary of state or a copy thereof

authenticated by him shall be is prima facie evidence of the organization of ~~such~~ the vector control district. Such district shall be and is hereby declared to be a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter or which may be reasonably implied in order to exercise such powers. The order of the council shall must specify the name or number by which ~~such~~ the vector control district shall be known.

SECTION 6. AMENDMENT. Section 23-24-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-05. Board of commissioners - Composition - Appointment - Term of office - Vacancy - Compensation. When an order of the council creating a vector control district has been filed in the office of the county auditor of a county in which ~~such~~ the district or a part of ~~such~~ the district is situated, a three-member board of commissioners of ~~such~~ the vector control district shall must be appointed as provided herein, consisting of three members by this section. Any resident freeholder in the district shall be is eligible for appointment to the board of commissioners thereof. The term of commissioners first appointed shall must be determined by lot. One commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years. The term of a commissioner shall commence on the date of appointment. If the office of a commissioner becomes vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board of commissioners whom the new commissioner replaces. Any vacancy must be filled in the manner provided for original appointments. Appointments to the board of commissioners shall must be made by the state health council with the approval of from a list of names submitted to the council by the board of county commissioners, the city governing body or township supervisors of any county, city, or township whose territory is embraced or included within said of the county containing the largest area of the vector control district. Any member of the board of commissioners may be removed upon a majority vote of the board of county commissioners that nominates members for the board of commissioners and the board of commissioners may be dissolved upon a majority vote of the board of county commissioners that nominates the members for the board. Each member shall receive the sum of thirty dollars per day while performing duties as a member of the board, or ~~such~~ a lesser sum as the board ~~itself~~ shall may determine, an allowance for meals and lodging as provided in section 44-08-04, and mileage expense reimbursement at the rate provided in section 54-06-09.

SECTION 7. AMENDMENT. Subsection 1 of section 23-24-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Take Declare, by resolution, that a potential or emergency health hazard exists and take all necessary and proper steps and measures for the eradication of public health vectors causing a potential or emergency health hazard within the district. Prior to taking ~~such~~ these measures the board shall consider technical information available to it for the purpose of determining the need for control measures and the need for specific action.

CHAPTER 309

SENATE BILL NO. 2268
(Committee on Natural Resources)
(At the request of the State Department of Health)

ASBESTOS CONTRACTORS

AN ACT to create and enact section 23-25-03.1 of the North Dakota Century Code, relating to certification of asbestos contractors and their workers; and to amend and reenact section 23-25-01 of the North Dakota Century Code, relating to definitions for purposes of air pollution control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-01. Definitions. For purposes of this chapter, the following words and phrases are defined:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination thereof.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life, or property.
3. ""Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded."
4. "~~"Emission" means a release of air contaminants into the ambient air.~~"
5. "~~"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency~~"

thereof, and any legal successor, representative agent or agency of the foregoing.

6. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
7. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means the repair, enclosure, encapsulation, removal, disposal, and inspection of friable asbestos material, and preparation of management plans for friable asbestos material.
6. "Asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any person engaged in asbestos abatement except at the person's private residence.
8. "Emission" means a release of air contaminants into the ambient air.
9. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
10. "Friable asbestos material" means any material containing more than one percent asbestos by weight that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
- 8- 11. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination thereof, which can reasonably be expected to cause or induce emissions of air contaminants.
12. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative agency, or agency of the foregoing.

SECTION 2. Section 23-25-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-25-03.1. Certification of asbestos contractors and their workers. The department is charged with the responsibility of

administering and enforcing a certification program for asbestos contractors and their workers and is given and charged with the following powers and duties:

1. To require training of and to examine asbestos contractors and their workers on safe asbestos abatement.
2. To establish standards and procedures for the certification of contractors and their workers engaging in the abatement of friable asbestos materials and to establish performance standards for asbestos abatement, such performance standards to be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act [42 U.S.C. 1868].
3. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.
4. To establish an annual fee for certifying asbestos contractors and establish examination and renewal fees for asbestos workers under section 23-25-04.2.
5. To establish indoor environmental nonoccupational air quality standards for asbestos.
6. To adopt and enforce rules as necessary for the implementation of this section.

The requirements of this section shall apply only to asbestos abatement conducted in buildings including but not limited to schools, government facilities, medical facilities, public buildings, residential buildings, motels, hotels, restaurants, or other commercial buildings, and any other buildings to which the public has unguided access or for which employee protection is not provided under the Federal Occupational Safety and Health Act.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 310

SENATE BILL NO. 2057
(Legislative Council)
(Interim Judiciary Committee)

EMERGENCY CARE LIABILITY

AN ACT to amend and reenact sections 23-27-04.1 and 39-08-04.1 of the North Dakota Century Code, relating to liability of certain persons who render services in an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-27-04.1. Emergency treatment rendered by officers, employees, or agents of ambulance service. No officer, employee, or agent of any ambulance service licensed to operate in this state who is an unpaid volunteer, who in good faith and in the exercise of reasonable and ordinary care, renders emergency care or services at the scene of an accident, disaster, or other emergency, shall be or in going to the scene, or en route to a treatment facility, is liable to the recipient of the emergency care or services for any civil damages resulting from any acts or omissions by the person in rendering the emergency care or services provided such the person is properly trained according to law. The provisions of this This section shall does not be construed to relieve the a person rendering emergency care from liability to the person receiving the emergency care for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

SECTION 2. AMENDMENT. Section 39-08-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-04.1. Emergency care at scene of accident - Liability. Any person who is an unpaid volunteer, who in good faith, shall administer renders emergency care or services at or near the scene of an accident or, disaster to the victims of the accident or disaster shall, or other emergency, or en route to a treatment facility, is not be held liable to the recipient of the emergency

care or services for any damages resulting from the rendering of that care or services.

~~The provisions of this~~ This section ~~shall~~ does not be ~~construed to relieve the a~~ person ~~rendering emergency care~~ from liability for ~~injury or death to the victim proximately~~ damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services. Further, liability is not relieved if the emergency care was rendered for remuneration or with the expectation of remuneration.

Approved March 26, 1987

Filed March 30, 1987

CHAPTER 311

HOUSE BILL NO. 1237
(Committee on Natural Resources)
(At the request of the Department of Health)

SOLID WASTE MANAGEMENT

AN ACT to amend and reenact subsection 1 of section 23-29-02, and sections 23-29-03, 23-29-04, 23-29-07, 23-29-08, and 23-29-13 of the North Dakota Century Code, relating to solid waste management and land protection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.

SECTION 2. AMENDMENT. Section 23-29-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-03. Definitions.

1. "Collection" ~~shall mean~~ means the act of removing solid wastes from the central storage point of the primary source or residential container.
2. "Department" ~~shall mean~~ means the North Dakota state department of health charged with the administration and enforcement of this chapter.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Person" ~~shall mean~~ means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision

of this state or any other state or political subdivision thereof, and any legal successor, representative agent or agency of the foregoing.

5. "Resource recovery" means the recovery of material or energy from solid wastes.
6. "Sanitary landfilling" shall mean means an engineered method of disposing of solid wastes on land in a manner that protects the environment by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with soil by the end of each working day.
- 5- "Solid wastes" shall mean garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial and commercial operations, as well as from communities.
7. "Solid wastes" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919, 42 U.S.C. 2011 et seq.].
- 6- 8. "Solid waste management" shall mean means the purposeful systematic control of the storage, collection, transport, handling, and disposal of solid wastes.
- 7- "Storage" shall mean the interim containment of solid waste, in an approved manner after generation and prior to ultimate disposal.
9. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- 8- 10. "Transport" shall mean means the movement of solid waste subsequent to collection and prior to disposal.

SECTION 3. AMENDMENT. Section 23-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-04. Powers and duties of the department. The department shall have the responsibility for the administration and enforcement of this chapter. It shall have the power and its duties shall be to:

1. Administer the state solid waste management program pursuant to provisions of this chapter.
2. Provide technical assistance on request to political subdivisions of the state and cooperate with appropriate federal agencies in carrying out the duties under this chapter, and may, on request, provide technical assistance to other persons.
3. Encourage and recommend procedures for the utilization of self-financing solid waste management systems and intermunicipal agencies in accomplishing the desired objective of this chapter.
4. Promote the planning and application of resource recovery facilities and systems which preserve and enhance the quality of air, water, and all resources.
5. Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 3251 et seq.], as amended, and for other state or federal legislation to assist in the management of solid wastes.
6. Survey the solid waste management needs within the state and maintain and upgrade the North Dakota solid waste management plan.
7. Require any person or combinations thereof within the state to submit for review and approval a solid waste management plan to show that solid wastes will be disposed of in accordance with the provisions of this chapter.
8. Prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations governing solid waste storage, collection, transport, handling, resource recovery, and disposal, in order to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable it to carry out the purposes and provisions of this chapter and the adopted solid waste management plan.
9. Establish the procedures for permits governing the design and, construction, operation, and closure of solid waste management facilities and systems.
10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection, notice, and hearing, prohibiting violation of any of the provisions of this

chapter or of any rules and regulations issued pursuant thereto, and requiring the taking of such remedial measures for solid waste management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this chapter.

SECTION 4. AMENDMENT. Section 23-29-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-07. Permits. The department is hereby authorized to issue permits for solid waste management facilities, and ~~to~~ solid waste transporters. It shall be unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. All such permits shall be nontransferable and shall be for a term of ~~two years of not more than five years~~ from the date of issuance. All such permits so issued shall be conditioned upon the observance of the laws of the state and the rules and regulations authorized herein.

~~All existing solid waste management activities shall comply with the permit requirements of this chapter within twelve months of July 1, 1975.~~

SECTION 5. AMENDMENT. Section 23-29-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-08. Inspections. The department is hereby authorized to inspect all solid waste management activities and facilities, at all reasonable times, to ensure compliance with the laws of this state, the provisions of this chapter, and the rules and regulations authorized herein.

SECTION 6. AMENDMENT. Section 23-29-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-13. Plats. All persons operating a solid waste ~~facility~~ management facilities for disposal under a permit issued pursuant to this chapter shall, upon completion of the operation at each site, file a plat of the area with the register of deeds of each county in which the facility is located, together with a description of the wastes placed therein.

Approved March 12, 1987
Filed March 16, 1987

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 312

SENATE BILL NO. 2155
(Committee on Political Subdivisions)
(At the request of the Highway Department)

HIGHWAY ABANDONMENT ORDER FILING

AN ACT to amend and reenact section 24-01-06 of the North Dakota Century Code, relating to abandonment of highways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-06. Authority to abandon sections of routes. The commissioner shall have the authority to abandon sections of routes on the state highway system when such abandoned sections are substantially replaced by improvements on new locations serving the area. Such abandonment may be made even though such highway is not placed on any other road system.

The abandonment order must be filed with the office of the register of deeds of each county in which the abandonment occurs.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 313

SENATE BILL NO. 2148
(Committee on Agriculture)
(At the request of the Highway Department)

HAY ON HIGHWAY RIGHT OF WAY

AN ACT to amend and reenact sections 24-01-12.1 and 24-01-12.2 of the North Dakota Century Code, relating to harvesting hay on state highway right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-01-12.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-12.1. Harvesting hay on state highway system - Storage and removal. Every person harvesting hay on the rights of way of the state highway system, ~~and intending to store who stores~~ the harvested hay on the rights of way for later removal, shall take measures to store the harvested hay near at the outer edge of the rights of way. ~~if, in the judgment of the commissioner, the harvested hay hampers the efficient and safe operation of the highway system, the~~ The commissioner may give notice to remove the stored hay any hay that is not stored as prescribed in this section. All hay stored on the rights of way must be removed by November first of each year.

SECTION 2. AMENDMENT. Section 24-01-12.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-12.2. Hay forfeiture. Any stored hay improperly stored on the right of way or which has not been removed within two weeks of the notice to do so, remaining on the right of way on November first of each year shall be deemed forfeited and disposed of in a manner deemed proper by the commissioner.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 314

SENATE BILL NO. 2203
 (Committee on Transportation)
 (At the request of the Highway Department)

CENTRAL VEHICLE MANAGEMENT

AN ACT to create and enact two new sections to chapter 24-02 of the North Dakota Century Code, relating to the transfer of motor vehicles to the central management system and motor vehicle user charges; and to amend and reenact section 24-02-03.3 of the North Dakota Century Code, relating to the central management of state motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-03.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-03.3. Central management system for all state-owned licensed motor vehicles. The commissioner shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to ~~this section~~ registration under chapters 39-04 and 39-05. ~~The system commissioner shall provide a uniform method of recording and reporting the utilization, mileage, and other costs of operating these motor vehicles documenting the use and cost of operation of motor vehicles in the system. The commissioner shall also establish a system whereby a recommendation can be made to advise the director of the office of management and budget concerning the acquisition and disposal as to the need to acquire or dispose of system motor vehicles subject to this section. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent.~~ Every state agency, institution, department, board, bureau, and commission unless exempted by the commissioner must use the system. The board of higher education and institutions under its jurisdiction are not required to use the system. An appropriate charge based on actual costs will be made for such services. All revenue received by the commissioner under this section shall be remitted by the commissioner to the state treasurer to be deposited by the treasurer in the state highway fund.

Each entity required to use the system must submit records of the operation of each vehicle as directed by the commissioner. ~~The commissioner is authorized, within the limits of legislative appropriation, to employ personnel necessary to carry out the duties prescribed by this section.~~

SECTION 2. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of motor vehicles. The title or other documents representing ownership of a motor vehicle owned or leased by the state, except the board of higher education and the institutions under its jurisdiction, must be transferred to the commissioner upon the effective date of this Act. If a transferred motor vehicle was originally purchased with dedicated or trust funds, the commissioner shall credit the purchaser with an amount equal to two-thirds of the national automobile dealers association wholesale value of the motor vehicle to be offset against future user charges. Any credit must be made available July 1, 1989, and be completed within ten years. The commissioner may assign motor vehicles purchased with federal funds to the original purchaser or may pay the market value of the vehicle to the original purchaser.

SECTION 3. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

User charges - Incidental revenues. Each entity using the central vehicle management system shall pay a user charge to the commissioner. The user charge will be set by the commissioner and must be based upon the actual cost of the service provided, including depreciation. The user charges and any proceeds from insurance claims, motor vehicle sales, commercial refunds or rebates, or similarly derived proceeds must be remitted to the state treasurer for deposit in the highway fund.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 315

HOUSE BILL NO. 1673
(Mertens, Strinden)

(Approved by the Committee on Delayed Bills)

HIGHWAY BID ADVERTISING

AN ACT to provide temporary authority to the highway commissioner to reduce the period of advertising for bids and to designate the time of opening of bids for certain highway department construction contracts; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Highway construction project bids and bid openings. Notwithstanding the provisions of section 24-02-19 the highway commissioner may reduce the period of advertising for bids on highway construction projects to two successive weeks. The highway commissioner may provide that, after receipt, the bids may be opened and read within a period set by the commissioner, not to exceed four weeks. Oral or written notice of the opening must be given to the bidders at least one day before opening of the bids.

SECTION 2. EFFECTIVE DATE. This Act is effective through June 30, 1987, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 316

HOUSE BILL NO. 1538
(Representatives Laughlin, Flaagan)
(Senator Wogsland)

HIGHWAY CONSTRUCTION PROJECT CLAIMS

AN ACT to amend and reenact section 24-02-25.1 of the North Dakota Century Code, relating to the filing of a claim against a highway construction project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-25.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-25.1. Claims against project - Notice of claim - When filed - Where filed. Any person who has furnished labor, materials, or supplies on a contract awarded under section 24-02-23, and who has not been paid in full at the time of final acceptance of the project by the department, shall have the right to file a claim against the contractor and the surety furnishing the performance bond.

Notice of the claim shall be given, in writing, to the contractor or the surety furnishing the performance bond and must provide a clear and concise statement of the labor, materials, and supplies furnished, to whom it was furnished, and the monetary value thereof. The claim shall bear interest, on each transaction for labor, materials, or supplies, commencing thirty days after the last transaction. The rate of interest must be the rate provided in section 28-20-34. The notice of the claim shall be made by certified mail postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or has a residence and posted within one hundred eighty days from the date on which the person completed the contribution giving rise to the claim.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 317

HOUSE BILL NO. 1549
(Representatives Peterson, O'Shea)
(Senators Mutch, W. Meyer)

HIGHWAY CONTRACTOR ARBITRATION CLAIMS

AN ACT to amend and reenact section 24-02-26.1 of the North Dakota Century Code, relating to contractors' claims submitted for arbitration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-26.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-26.1. Condition precedent to contractor demand for arbitration - Claims for extra compensation. In addition to the provisions of section 24-02-30, full compliance by a contractor with the provisions of this section is a condition precedent to the contractor's right to demand arbitration. If the contractor believes the contractor is entitled to additional compensation for work or materials not covered in the contract or not ordered by the engineer as extra work or force account work in accordance with the contract specifications, the contractor shall, prior to beginning the work which the claim will be based upon, notify the engineer in writing of the intent to make claim for additional compensation. If the basis for the claim does not become apparent until the contractor has commenced work on the project and it is not feasible to stop the work, the contractor shall immediately notify the engineer that the work is continuing and that written notification of the intent to make claim will be submitted within ten calendar days. Failure of the contractor to give the notification required and to afford the engineer facilities and assistance in keeping strict account of actual costs will constitute a waiver of claim for additional compensation in connection with the work already performed. Notification of a claim, and the fact that the engineer has kept account of the costs involved, shall not be construed as proving or substantiating the validity or actual value of the claim.

Any person submitting a claim for compensation under this section, personally or on behalf of another person or entity, shall do so in writing, stating the monetary amount of the claim, the

reason for the claim, when the loss was incurred, and a short statement of the factual situation under which the claim arose. The claim must be made under oath or equivalent affirmation. The commissioner shall provide claim forms to persons requesting or indicating a need for them.

The contractor shall make available to the department and allow the department to examine and copy all of the contractor's records, documents, worksheets, and other data which are pertinent to the justification of the claim and to the substantiation of all costs related to the claim.

Approved March 27, 1987

Filed March 30, 1987

CHAPTER 318

HOUSE BILL NO. 1396
(Representative Dalrymple)
(Senator Tweten)

TOWNSHIP ROAD DITCHES

AN ACT to create and enact a new section to chapter 24-06 of the North Dakota Century Code, relating to maintenance of township road ditches.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of township road ditches - Limited duty. The party with an interest in land adjacent to a township road is not responsible for maintaining that ditch unless improper conservation practices on that party's adjoining land have led to unreasonable wind and water erosion, not commonly experienced in the locality, which resulted in conditions adversely affecting the ditch. On the occurrence of such improper conservation practices, the board of township supervisors may require the adjoining party with an interest in the land to clean the ditch at that party's expense. If that party fails to clean the ditch, the procedures applicable to the duty to cut weeds under chapter 63-05 apply with respect to the cleaning of the ditch.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 319

HOUSE BILL NO. 1397
(Representative Dairymple)
(Senator Tweten)

TOWNSHIP ROAD DITCHES

AN ACT to create and enact a new section to chapter 24-06 of the North Dakota Century Code, relating to maintenance of ditches along township roads by parties with an interest in adjoining land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of township road ditches by private party - Power of board of township supervisors - Approval - Standards of construction. The board of township supervisors may authorize any private party to maintain, clean, or shape a ditch along a township road at that party's own expense and in accordance with this section. In maintaining, cleaning, or shaping a ditch, the private party may not spread any soil or debris from that ditch along adjoining land without the permission of all parties with an interest in that land. The ditch may be on a continuous grade from the bottom of the upstream water outlet to the bottom of the downstream water outlet structure. The grade ratio in that distance must be a slope that, in light of the soil types and potential for vegetative cover in the ditch, will resist erosion. In order for any action to be considered maintenance of a ditch in accordance with this section, the ditch must be entirely contained within the township right of way, must have a bottom that is not wider than twelve feet [3.66 meters], and may not alter the side slope of the ditch to a slope steeper than the existing side slope. The board of township supervisors may not approve private maintenance of a ditch that does not comply with the standards of this section. If the board of township supervisors denies permission to maintain a ditch under this section, the petitioner may appeal that decision to the water resource board that has jurisdiction over the ditch. This section does not relieve any person from compliance with any requirements for a drainage permit which are required by statute or rule.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 320

SENATE BILL NO. 2080
(Legislative Council)
(Interim Transportation Committee)

MINIMUM MAINTENANCE ROADS

AN ACT to create and enact three new sections to chapter 24-07 and a new subsection to section 32-12.1-03 of the North Dakota Century Code, relating to the designation of certain roads as minimum maintenance roads and the limitation of liabilities of political subdivisions for those roads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Designation of minimum maintenance road. A board having jurisdiction as described in this chapter, and the governing body of a city, may designate a road under its jurisdiction as a minimum maintenance road in accordance with sections 1 through 3 of this Act. The designation may be made only if the board or governing body determines that the road to be so designated is used only occasionally or intermittently for passenger and commercial travel. Further, the designation cannot be made if the road is used as a schoolbus route, mail route, or as the only access to any existing residence. In its action designating the minimum maintenance road, the board or governing body shall identify the beginning and end of the road. The board or governing body shall notify each adjoining political subdivision of a designation made under this section. If a road runs along the boundary of political subdivisions, the designation as a minimum maintenance road is not applicable unless the board or governing body of each adjoining political subdivision agrees with the designation.

SECTION 2. A new section to chapter 24-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Required signs on minimum maintenance roads. The body making a designation of a minimum maintenance road shall post signs at the beginning and the end of the road and at regular intervals along the road. The signs must conform to standards adopted by the highway commissioner by rule. If the signs are properly posted, that fact

is prima facie evidence that adequate notice of the road's status as a minimum maintenance road has been given to the public.

SECTION 3. A new section to chapter 24-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitations on designation of minimum maintenance roads. A road is not eligible for designation as a minimum maintenance road if federal highway aid to this state would be reduced as a result of that designation. A road is not eligible for that designation if additional right of way or easement by eminent domain is required for constructing or designating the road as a minimum maintenance road, unless the consent of the landowner is given or the designation is necessary for drainage or public safety.

SECTION 4. A new subsection to section 32-12.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A political subdivision is not liable for any claim based on an act or omission in the designation, repair, operation, or maintenance of a minimum maintenance road if that designation has been made in accordance with sections 1 through 3 of this Act and if the road has been maintained at a level to serve occasional and intermittent traffic.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 321

HOUSE BILL NO. 1219
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

RAILROAD CROSSING WARNINGS

AN ACT to amend and reenact sections 24-09-01.1, 24-09-02, 24-09-04, 24-09-05, 24-09-08.1, and 24-09-09 of the North Dakota Century Code, relating to warning devices at railroad crossings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-09-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-09-01.1. Standard railroad crossing warning systems - Survey for additional warning systems. The standard warning system at each public highway-railroad grade crossing shall be railroad crossbucks and advance warning signs designed and located pursuant to section 39-13-07. These signing requirements and standards shall be deemed adequate and appropriate for warning of the existence and nature of each railroad crossing for all purposes whatsoever. However, because of the availability of substantial federal funds, and for the purpose of promoting the additional safety and general welfare of the motoring public, and railroad employees, and to secure the practical and orderly development of additional warning systems beyond the standards herein, and to enable the various jurisdictional authorities to implement existing statutes authorizing the determination of need and selection of additional warning systems, and within the practical limitations of time and available public funds, the department, ~~with the concurrence of the commission,~~ shall conduct and systematically maintain a survey of all streets and highways as required by the Federal Highway Safety Act of 1973, to identify those railroad crossings which may need additional warning systems beyond the standard crossbucks and advance warning signs. To implement such survey and to make the determination of need and selection of additional warning systems the department may screen, rate and prioritize said crossings for additional warning systems and establish an installation program ~~in concurrence with the commission.~~ In order to foster additional warning systems beyond the standards herein or improvements thereto, where such additional warnings or improvements thereto are deemed

necessary by any jurisdictional authority either under this statute or any other statutes, neither the actions, proceedings, findings, or orders of any jurisdictional authority, nor the actions of the railroad regarding such additional warning or improvements thereto, prior to installation and operation thereof, shall be admissible in evidence in any civil action for personal injury, death, or damage to property arising out of a public highway-railroad crossing accident.

SECTION 2. AMENDMENT. Section 24-09-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-09-02. Uniform warning systems at railroad crossings. The ~~commission~~ department shall adopt and prescribe uniform warning systems in conformity with sections 39-13-06 and 39-13-07 for use at public grade crossings in this state which will be deemed adequate and appropriate warning of the existence and nature of such grade crossings for all purposes whatsoever.

SECTION 3. AMENDMENT. Section 24-09-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-09-04. Advance warning signs - Exceptions. The sole signing duty of the road authority, except as otherwise designated by the commission under section 24-09-08, at public grade crossings in the state shall be the erection and maintenance of advance warning signs in accordance with the manual on uniform traffic control devices. The road authorities shall have a reasonable length of time, not exceeding two years, in which to fully implement this requirement.

SECTION 4. AMENDMENT. Section 24-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-09-05. Stop signs may be required. At each grade crossing where, because of the dangers attendant upon its use, the reasonable protection to life and property makes it necessary for all persons approaching the same to stop before crossing the railroad tracks thereat, stop signs shall be installed. The ~~commission~~ department may designate any crossing requiring such additional protection as a stop crossing, and shall notify the railway company operating the railroad thereat of such designation. Within thirty days after such notification the railway company shall erect uniform stop crossing signs in conspicuous places on each side of said crossing.

SECTION 5. AMENDMENT. Section 24-09-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-09-08.1. Public service commission State highway department to apportion cost - Exception. In order to promote public safety at intersections of railroad lines and all classes of highways, the ~~commission~~ department shall apportion the cost of automatic grade

crossing protection devices in accordance with this section. In the event that the commission in accordance with the provisions of section 24-09-08 orders that any grade crossing shall be protected by automatic grade crossing protection devices, the commission shall in its order apportion the cost thereof between the railroad interested, the political subdivision having jurisdiction of the highway involved, and the state of North Dakota. Such cost shall be apportioned to such parties or to any one or more of such parties on the basis of the benefit derived respectively by highway users and the railroad from the installation of such crossing protection device. For the purpose of this section, the cost attributable to the benefit of the highway users shall be apportioned to the state of North Dakota or to the political subdivision having jurisdiction of the highway involved or to both of such parties. The cost apportioned to the state of North Dakota shall be paid out of the highway fund in the state treasury, provided that not more than one hundred thousand dollars may be expended for this purpose in any one biennium.

SECTION 6. AMENDMENT. Section 24-09-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-09-09. Warning devices must be approved by public service commission state highway department. The commission department, so far as practicable, shall secure uniformity in the devices used to protect grade crossings. No such devices shall be installed until the same have been approved by the commission department. All Except for devices prescribed under section 24-09-08, all devices installed, which, in the opinion of the commission, conflict with the devices approved by the commission department, either in their design or method of operation, so as to create a hazardous condition to travel at such crossing, shall be modified immediately by the railway company controlling the same so as to conform to those approved by the commission department.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 322

SENATE BILL NO. 2560
(Stromme)

(Approved by the Committee on Delayed Bills)

SECTION LINE OBSTRUCTION

AN ACT to amend and reenact section 24-12-02 of the North Dakota Century Code, relating to obstructing public highways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-12-02. Obstructing highways. No person shall:

1. Obstruct any public highway in any manner with intent to prevent the free use thereof by the public;
2. Willfully and knowingly obstruct or plow up, or cause to be obstructed or plowed up, any public highway or right of way, except by order of the officials having jurisdiction over such highway for the purpose of working or improving the same; ~~or~~
3. Build or place a barbed wire fence across any well-traveled trail which has been the usual and common route of travel for not less than one year without placing on the outside of the top tier of barbed wire on said fence a board, pole or other suitable protection, to be at least sixteen feet [4.88 meters] in length; or
4. Plow up a section line in a manner so as to obstruct usual travel on the section line.

Approved April 21, 1987
Filed April 22, 1987

MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

CHAPTER 323

SENATE BILL NO. 2362
(Waldera, Maixner)

HOSPITALIZATION ALTERNATIVES

AN ACT to amend and reenact section 25-03.1-21 of the North Dakota Century Code, relating to alternatives to hospitalization for persons requiring treatment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-21. Alternatives to hospitalization. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility.

If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days. If, during this period, the court or the county court of a different county in which the respondent is presently located learns that the respondent is not complying with the order, or that the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the court may without a hearing, or the county court of a different county in which the respondent is presently located may with a hearing, and based upon the record and other available information:

1. Consider other alternatives to hospitalization, modify ~~its~~ the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or

2. Enter a new order directing that the individual be hospitalized ~~for the remainder of the ninety-day period until discharged from the hospital pursuant to section 25-03.1-30.~~ If the individual refuses to comply with this hospitalization order, the court or the county court of a different county in which the respondent is presently located may direct a peace officer to take the individual into protective custody and transport him to a treatment facility.

If the respondent does not comply with the individualized treatment plan contained in an order for alternative treatment, the department of human services or the physician who cares for the respondent may petition the court or the county court of a different county in which the respondent is presently located to direct the respondent to comply with the individualized treatment plan. The court that is petitioned shall set a hearing date which must be within one hundred twenty hours, excluding weekends and holidays, of the date the court received the petition. If at the hearing the court determines the respondent is not complying with the order, the court may direct the respondent to comply with the treatment plan or other appropriate treatment, including another program of alternative treatment or hospitalization for the remainder of the ninety-day period.

If a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional reasonably believes that the respondent is not complying with the individualized treatment plan contained in an order for alternative treatment or that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that consideration of time and safety do not allow intervention by a court, the designated mental health professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility must immediately accept, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the record and other available information:

1. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the commitment period; or

2. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital pursuant to section 25-03.1-30.

If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the ~~facility~~ individual is located.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 324

HOUSE BILL NO. 1489
(Representative Wentz)
(Senator Stenehjem)

COMMITMENT APPEALS

AN ACT to amend and reenact section 25-03.1-29 of the North Dakota Century Code, relating to anonymity of respondents in mental health commitment hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-29 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-29. Appeal. The respondent shall have the right to an expedited appeal from an order of involuntary commitment or alternative treatment, a continuing treatment order, an order denying a petition for discharge, or an order of transfer. Upon entry of an appealable order, the court shall notify the respondent of the right of appeal and the right to counsel. The notice of appeal must be filed within thirty days after the order has been entered. Such appeal shall be to the supreme court and the hearing shall be commenced within fourteen days of filing of the notice of appeal. The hearing shall be limited to a review of the procedures, findings, and conclusions of the lower court. The name of the respondent shall not appear on the record on appeal.

Pending appeal, the order appealed from shall remain in effect, unless the supreme court determines otherwise. The respondent shall not be denied the opportunity to be present at the appeal hearing, and the court conducting the appeal may issue such interim order as will assure this opportunity to the respondent while protecting the interest sought to be served by the order appealed from.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 325

SENATE BILL NO. 2068
 (Legislative Council)
 (Interim Legislative Audit and Fiscal Review Committee)

STATE INSTITUTION CARE EXPENSES

AN ACT to create and enact two new sections to chapter 25-04 of the North Dakota Century Code, relating to liability for care and treatment of nonresident patients at and reduction or writeoff of accounts receivable by the Grafton state school; and to amend and reenact section 25-04-04, subsection 3 of section 25-04-05, and sections 25-04-14, 25-04-15, 25-16-13, 50-06.3-03, 50-06.3-04, and 50-06.3-09 of the North Dakota Century Code, relating to payment of expenses for care and treatment of patients at the Grafton state school and the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-04. Who may receive benefits of state school. Subject to the provisions of this chapter ~~25-09~~ and to such rules and ~~regulations~~ as may be made by the director, the benefits of the state school may be received by persons who are residents of this state and who are:

1. Mentally deficient and, in the opinion of the superintendent of the state school, are of suitable age and capacity to receive instruction in ~~such~~ the school and whose deficiencies prevent them from receiving proper training and instruction in the public schools; or
2. Mentally deficient, and who cannot be properly cared for in their homes or other available facilities.

SECTION 2. AMENDMENT. Subsection 3 of section 25-04-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Care and treatment at the state school ~~shall~~ must be provided without charge to anyone under twenty-one years of age who is qualified for admission pursuant to this

chapter. Residents not more than twenty-one years of age admitted to the state school ~~shall be~~ are entitled to transportation as provided by rules and ~~regulations~~ of the department of public instruction. The rules and ~~regulations of the department of public instruction shall~~ have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident ~~shall~~ must be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the individualized education program at a rate not to exceed that paid state officials. Persons over twenty-one years of age who are qualified for admission pursuant to this chapter ~~shall be~~ are responsible for expenses ~~incurred through charged for~~ care and treatment at the state school in the manner provided by this chapter 25-09.

SECTION 3. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Liability for care and treatment of nonresident patients. Nonresident patients at the Grafton state school and nonresident responsible relatives of patients are liable for the chargeable costs of care and treatment at the state school.

SECTION 4. AMENDMENT. Section 25-04-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-14. Expenses chargeable against patient or patient's estate - Filing claims. Expenses for care and treatment of each patient over twenty-one years of age at the Grafton state school ~~shall~~ must, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the patient's ability to pay which must include an estimate of potential future receipts including amounts from estates. The supervising department shall, ~~if possible,~~ recover ~~monthly~~ from the patient or from a discharged patient expenses chargeable for care and treatment. If any patient is receiving social security benefits or is a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, ~~such~~ the expenses are a current claim against the patient and may be recovered monthly by the supervising department except that any amount required by the payor of ~~such~~ the benefits to be paid directly to the patient ~~shall~~ must, upon approval of the director of institutions, be credited to the patient's personal account from any money thus received.

SECTION 5. AMENDMENT. Section 25-04-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-15. Expenses chargeable against guardianship estate of patient - Restrictions. The expenses ~~incurred~~ chargeable by the state for the care and treatment of any patient over twenty-one years of age at the Grafton state school shall must be charged against the guardianship estate of such patient, if ~~he~~ the patient has such an estate, subject to the following restrictions:

1. No part of ~~such~~ the estate shall ~~may~~ be taken for such purpose if the patient has dependents within the United States dependent upon the estate for support and the taking of all or a portion of ~~such~~ the estate would result in undue hardship to ~~such~~ those dependents.
2. No real property belonging to ~~such~~ the estate shall ~~may~~ be sold during the lifetime of the patient except for the maintenance and support of ~~his or her~~ the patient's dependents, unless it is shown that the sale of ~~such~~ the property will not result in undue hardship to ~~such~~ those dependents, and ~~in either such event,~~ it shall ~~may~~ be sold only upon the order of the county court having jurisdiction of the estate, with the consent of the director of institutions.
3. No personal property belonging to ~~such~~ the estate shall ~~may~~ be sold within five years from the date upon which the patient was sent to the state school unless ~~such~~ the property is ordered sold by the county court having jurisdiction of the estate for the reason that ~~such~~ the property is likely to deteriorate in value during the time herein specified.
4. No claim ~~shall~~ may be made to recover from the estate of a former resident of the state school who has left the state school and married, and leaves a spouse or issue dependent upon such estate.

SECTION 6. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reduction or writeoff of accounts - Report to legislative audit and fiscal review committee. The supervising department may authorize the reduction or writeoff of a patient's past due account from the Grafton state school's financial records upon determining that the account is not collectible. The supervising department, thirty days after the close of each fiscal year, shall present a detailed report to the legislative audit and fiscal review committee on the status of accounts receivable for that fiscal year. The report must include:

1. An aging by patient classification of accounts remaining unpaid.

2. The amounts by patient classification by which accounts were reduced or written off for reasons other than payment during that fiscal year.

SECTION 7. AMENDMENT. Section 25-16-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-13. Expenses chargeable against patient, his patient's estate, or responsible relatives. ~~The provisions of this~~ This chapter shall in no way does not relieve the responsibility of the patient, his the patient's estate, or responsible relatives of the expenses for care and treatment as is provided in chapter 25-09, and all the 25-04 or 50-06.3. ~~The provisions of chapter 25-09 and other statutes 25-04 or 50-06.3~~ applicable to the expenses of care and treatment of patients shall apply to this chapter.

SECTION 8. AMENDMENT. Section 50-06.3-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.3-03. Fees and expenses chargeable against patients. Expenses for care and treatment of each patient at the state hospital must be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the patient's or other responsible party's ability to pay which must include an estimate of potential future receipts including amounts from estates. The department shall recover monthly expenses charged for care and treatment. The department shall may not recover expenses under this chapter for care and treatment of a patient transferred to the state hospital from a jail or regional corrections center. If any patient is receiving social security benefits or is a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veteran's veterans' administration, the expenses are a current claim against the patient and may be recovered monthly by the department except that any amount required by the payor of the benefits to be paid directly to the patient shall must be credited to the patient's personal account from any money thus received.

SECTION 9. AMENDMENT. Section 50-06.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.3-04. Liability for payment. The recipient, patient, recipient's or patient's estate, and recipient's or patient's spouse are liable for fees and expenses for services rendered by the department, through its regional human service centers, and for care and treatment expenses charged at the state hospital. The parents of a recipient or patient are liable for fees and expenses incurred responsible for services, care, and treatment provided prior to the eighteenth birthday of the recipient or patient.

SECTION 10. AMENDMENT. Section 50-06.3-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.3-09. Expenses chargeable against guardianship estate of patient - Restrictions. The expenses ~~incurred~~ chargeable by the state for the care and treatment of any patient at the state hospital ~~shall~~ must be charged against the guardianship estate of the patient, if the patient has an estate, subject to the following restrictions:

1. No part of the estate ~~shall~~ may be taken if the patient has dependents within the United States dependent upon the estate for support and the taking of all or a portion of the estate would result in undue hardship to those dependents.
2. No real property belonging to the estate ~~shall~~ may be sold during the lifetime of the patient except for the maintenance and support of the patient's dependents, unless it is shown that the sale of the property will not result in undue hardship to those dependents, and it may be sold only upon the order of the county court having jurisdiction of the estate, with the consent of the department.
3. No personal property belonging to the estate may be sold within five years from the date upon which the patient was sent to the institution unless the property is ordered sold by the county court having jurisdiction of the estate for the reason that the property is likely to deteriorate in value during the time herein specified.

If any real or personal property is sold pursuant to ~~the provisions~~ of this section, the county court shall order the proceeds of the sale to be invested safely for the benefit of the patient or to be used for the support and maintenance of the patient's dependents, or used to pay the costs of care and treatment of the patient.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 326

SENATE BILL NO. 2548
(Heigaard)

(Approved by the Committee on Delayed Bills)

STATE SCHOOL SUPERINTENDENT AS GUARDIAN

AN ACT to amend and reenact subsection 1 of section 25-04-13.1 of the North Dakota Century Code, and section 16 of chapter 313 of the 1983 Session Laws of North Dakota, relating to the superintendent of the Grafton state school acting as guardian of any resident.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 25-04-13.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The superintendent of Grafton state school shall continue to be guardian until ~~July 1, 1987~~ February 1, 1988, of any resident of Grafton state school for whom he ~~is~~ was guardian on July 1, 1985, except as otherwise provided by court order, except where the resident is discharged from Grafton, or except as otherwise provided by this section. The superintendent may renounce in writing his guardianship of any resident between July 1, 1985, and ~~July 1, 1987~~ February 1, 1988. The resident will not have a guardianship upon renunciation by the superintendent. The guardianship of a minor for whom there has been no court-ordered alternate guardian appointed will revert back to the minor's parents on renunciation by the superintendent or on ~~July 1, 1987~~ February 1, 1988. The superintendent shall provide written notice of any intended renunciation to the resident and the resident's parent, advocate, and case manager thirty days before the effective date of the renunciation, or on ~~June 1, 1987~~ January 1, 1988, whichever date occurs first.

SECTION 2. AMENDMENT. Section 16 of chapter 313 of the 1983 Session Laws of North Dakota as amended by section 7 of chapter 369 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 16. EFFECTIVE DATE. Section 15 shall be effective on ~~July 1, 1987~~ February 1, 1988.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 327

SENATE BILL NO. 2125
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

SCHOOL FOR THE BLIND TRANSPORTATION

AN ACT to amend and reenact section 25-06-04 of the North Dakota Century Code, relating to transportation costs for students at the school for the blind.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-06-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-04. Qualifications for admission to school for the blind - Residents of state entitled to free education. Applicants for admission to the school for the blind must be blind or partially blind and unable to make suitable progress in the public schools of the state. The superintendent, with the approval of the director, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person shall be admitted to the institution until the application giving such information as the director may require has been returned to and approved by the superintendent of the school for the blind. An applicant admitted to the school for the blind shall be entitled to furnished transportation by the school as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident shall be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the student's individualized education program at a the most economical rate not to exceed that paid state officials possible, and yet meet the student's needs. Each such applicant who is a resident of this state and who, because of his handicap, is unable to receive an education in the public schools, shall be entitled to receive an education in the school for the blind at the expense of the state.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 328

SENATE BILL NO. 2124
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

SCHOOL FOR THE DEAF TRANSPORTATION

AN ACT to amend and reenact section 25-07-04 of the North Dakota Century Code, relating to transportation costs for students at the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-07-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-04. Qualifications for admission to school for deaf - Residents of state entitled to free education. In order to be admitted as a pupil in the school for the deaf, an applicant's hearing must be impaired to such extent that he cannot make suitable progress in the public schools of the state. The superintendent, with the approval of the director, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person shall be admitted to the institution until the application giving such information as the director of institutions may require has been returned to and approved by the superintendent. An applicant admitted to the school shall be entitled to furnished transportation by the school as provided by rules and regulations of the department of public instruction. The rules and regulations of the department of public instruction shall have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident shall be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the student's individualized education program at a the most economical rate not to exceed that paid state officials possible, and yet meet the student's needs. Each such applicant who is a resident of this state and who, because of his handicap, is unable to receive an education in the public schools, shall be entitled to receive an education in the school for the deaf at the expense of the state.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 329

HOUSE BILL NO. 1421
(Representatives Oban, Wentz)
(Senators Waldera, Lips)

WORK ACTIVITY CENTER BIDS

AN ACT to require the office of management and budget and the state highway department to award contracts for the purchase of highway grade stakes to facilities for the physically handicapped, developmentally disabled, and chronically mentally ill; and to amend and reenact sections 24-02-19 and 54-44.4-05 of the North Dakota Century Code, relating to competitive bidding procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Work activity center - Definition. As used in this Act "work activity center" means a facility located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for physically handicapped, developmentally disabled, and chronically mentally ill persons.

SECTION 2. Direct bidding with work activity centers for highway grade stakes. Unless no work activity center bids on the contract, the office of management and budget or the state highway department, whichever may be authorized to purchase highway grade stakes, shall award any contract for the purchase of highway grade stakes to work activity centers. The office of management and budget or the state highway department shall request bids from work activity centers and shall award any contract for the purchase of highway grade stakes on the basis of these factors:

1. Whether the product contracted for is supplied by the work activity center at a fair market price.
2. Whether the product to be supplied by the work activity center meets the specifications of the state highway department.
3. The ability, capacity, and skill of the work activity center to perform the contract required.

4. The character, integrity, reputation, judgment, experience, and efficiency of the work activity center.
5. Whether the work activity center can perform the contract within the time specified.
6. The quality of performance of previous contracts negotiated with the work activity center.
7. The previous and existing compliance by the work activity center with laws relating to the contract.

SECTION 3. Contract requirement. Any contract awarded pursuant to this Act must be in writing and must be made available by the purchasing party to any person upon request. The contract must include the purchase price, the quantity of product purchased, and the time period for which the product will be provided.

SECTION 4. AMENDMENT. Section 24-02-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-19. Request for bids - How advertised. Any request for bids for construction work or the improvement of any state highway, or any structure in excess of the amount specified in section 24-02-17, shall be advertised by publication once a week for a period of three successive weeks, prior to the opening of such bids, in the official newspaper of the county in which the project is located. Such advertisement shall state where the bidder may inspect the plans and specifications, with whom bids shall be filed, and the time and place where bids shall be opened. Such place shall be the office of the department. All requests for bids for the purchase of equipment, materials, and supplies, exclusive of repairs to equipment and except as provided in section 2 of this Act in excess of the sum of two thousand dollars shall be advertised in the official newspaper of Burleigh County once a week for a period of two successive weeks prior to the opening of such bids.

SECTION 5. AMENDMENT. Section 54-44.4-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.4-05. Competitive bidding on purchases. Except as otherwise provided in section 44-08-01 and section 2 of this Act, purchasing contracts shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability. The office of management and budget may reject any or all bids or negotiate for a lower price with a successful bidder. The office of management and budget shall publish at least once per year in each official county newspaper in the state the procedures to be followed to sell goods and materials to state agencies, departments, and institutions. Each bid received, with the name of the bidder, shall be recorded.

Approved March 20, 1987
Filed March 23, 1987

INSURANCE

CHAPTER 330

HOUSE BILL NO. 1175
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE FRAUD REPORT IMMUNITY

AN ACT to provide persons making reports of fraudulent insurance acts immunity from all liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definition. For the purpose of this Act, "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

SECTION 2. Immunity from liability. In the absence of fraud or bad faith, no person is subject to civil liability of any kind, including for libel and slander, by virtue of filing reports, without malice, or furnishing other information, without malice, required by the insurance laws of this state or required by the commissioner, and no civil cause of action of any nature may arise against such person for any of the following:

1. Any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents and employees.
2. Any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this chapter.
3. Any such information furnished in reports to the insurance fraud bureau, national association of insurance commissioners or any organization established to detect

and prevent fraudulent insurance acts, their agents, employees or designees, nor is the commissioner or any employee of the insurance frauds bureau, in the absence of fraud or bad faith, subject to civil liability and no civil cause of actions of any nature may arise against such person by virtue of the publication of any report or bulletin related to the official activities of the insurance frauds bureau. Nothing herein is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 331

HOUSE BILL NO. 1243
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

GROUP INSURANCE REQUIREMENTS

AN ACT to require certain insurance companies to submit information to the commissioner of insurance relating to group life and health insurance trust filing and solicitation requirements; and to amend and reenact section 26.1-36-23 of the North Dakota Century Code, relating to the continuation of group hospital insurance benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Group life and health insurance trust filing - Exemption requirements. Any insurance company claiming an exemption under subsection 6 of section 26.1-02-05 from a requirement that the company have a certificate of authority to do business in this state or comply with the insurance laws of this state must provide the following information to the commissioner of insurance for the commissioner's approval of the exemption:

1. A copy of the trust agreement for the group.
2. A full copy of the master contract.
3. A copy of the certificate of insurance to be issued or sold in this state.
4. A copy of the application for the certificate of insurance.
5. A copy of a disclosure statement used in the solicitation of the insurance indicating that the protection of North Dakota's insurance laws will not be provided to the holders of certificates of insurance issued by the group.
6. An assurance that only one type of insurance coverage may be included in each mailing or mass market solicitation.
7. Such other information as the commissioner of insurance deems necessary to assure that the group is organized for

purposes other than the procurement of insurance or otherwise meets the requirements of subsection 6 of section 26.1-02-05.

No company may issue or deliver a policy of insurance or issue or deliver for issue a certificate of insurance in this state without a certificate of authority unless it has first been granted approval in writing to do so by the commissioner of insurance under this section.

SECTION 2. AMENDMENT. Section 26.1-36-23 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-23. Continuation of group hospital, surgical, and major medical coverage after termination of employment or membership. A group policy or certificate of insurance or certificate on a master policy of a group as defined by subsection 6 of section 26.1-02-05 delivered or issued for delivery in this state issued by any insurance company, nonprofit health service corporation, health maintenance organization, or any other insurer that provides hospital, surgical, or major medical expense insurance or any accommodation of these coverages on an expense incurred basis, but not a policy that provides benefits for specific diseases or for accidental injuries only, must provide that employees or members whose insurance under the group policy would otherwise terminate because of termination of employment or membership are entitled to continue their hospital, surgical, and major medical insurance under that group policy, for themselves and their eligible dependents, subject to all of the group policy's terms and conditions applicable to those forms of insurance and to the following conditions:

1. Continuation is only available to an employee or member who has been continuously insured under the group policy (and for similar benefits under any group policy which it replaced) during the entire three-month period ending with the termination.
2. Continuation is not available for any person who is covered by medicare. Neither is continuation available for any person who is covered by any other insured or uninsured arrangement which provides hospital, surgical, or medical coverages for individuals in a group and under which the person was not covered immediately prior to the termination.
3. Continuation need not include dental, vision care, or prescription drug benefits or any other benefits provided under the group policy in addition to its hospital, surgical, or major medical benefits.
4. An employee or member who wishes continuation of coverage must request the continuation in writing within the ten-day period following the later of the date of

termination, or the day the employee is given notice of the right of continuation by either the employer or the group policyholder. The employee or member may not elect continuation more than thirty-one days after the date of termination.

5. An employee or member electing continuation shall pay to the group policyholder or the employer, on a monthly basis in advance, the amount of contribution required by the policyholder or employer, but not more than the group rate for the insurance being continued under the group policy on the due date of each payment. The employee's or member's written election of continuation, together with the first contribution required to establish contributions on a monthly basis in advance, must be given to the policyholder or employer within thirty-one days of the date the employee's or member's insurance would otherwise terminate.
6. Continuation of insurance under the group policy for any person terminates when the person fails to satisfy subsection 2 or, if earlier, at the first to occur of the following:
 - a. The date thirty-nine weeks after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.
 - b. If the employee or member fails to make timely payment of a required contribution, the end of the period for which contributions were made.
 - c. The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under the group policy. However, if this subdivision applies and the coverage ceasing by reason of such termination is replaced by similar coverage under another group policy, the following apply:
 - (1) The employee or member may become covered under that other group policy for the balance of the period that the employee or member would have remained covered under the prior group policy in accordance with this subsection had a termination described in this subdivision not occurred.
 - (2) The minimum level of benefits to be provided by the other group policy is the applicable level of benefits of the prior group policy reduced by any benefits payable under that prior group policy.

- (3) The prior group policy must continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the replacement had not occurred.
7. A notification of the continuation privilege must be included in each certificate of coverage.
8. Upon termination of the continuation period, the member, surviving spouse, or dependent is entitled to exercise any option which is provided in the group plan to elect a conversion policy. The member electing a conversion policy shall notify the carrier of the election and pay the required premium within thirty-one days of the termination of the continued coverage under the group contract.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 332

SENATE BILL NO. 2271
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

ANNUAL INSURANCE COMPANY STATEMENTS

AN ACT to require insurance companies to file their annual statements with the national association of insurance commissioners to monitor solvency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Domestic insurance company annual statements - Filed with national association of insurance commissioners.

1. Every domestic, foreign, and alien insurance company in this state must transmit to the national association of insurance commissioners, not later than March first of each year, a copy of its annual statement, along with any additional filings as described by the commissioner for the preceding year. The information filed with the national association of insurance commissioners must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing subsequently filed with the commissioner must also be filed with the national association of insurance commissioners. The commissioner of insurance may exempt any domestic company or category or class of domestic companies from the filing requirement.
2. Foreign insurance companies domiciled in a state which has a law substantially similar to subsection 1 are deemed to be in compliance with this section.

SECTION 2. Immunity of national association of insurance commissioners employees. In the absence of actual malice, members of the national association of insurance commissioners and their employees and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement act as agents of the commissioner under the authority of this Act and are not subject to civil

liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required by this Act.

SECTION 3. Confidentiality. All financial analysis ratios and examination synopsis concerning insurance companies that are submitted to the department by the national association of insurance commissioners' insurance regulatory information system are confidential, may not be disclosed by the department, and are exempt from section 44-04-18.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 333

SENATE BILL NO. 2164
(Committee on Finance and Taxation)
(At the request of the Commissioner of Insurance)

INSURANCE PREMIUM TAX PAYMENT

AN ACT to amend and reenact section 26.1-03-17 of the North Dakota Century Code, relating to the payment and amount of insurance company premium taxes, the penalty for failure to make timely payment of those taxes, and credit against future liability for overpayment of those taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 26.1-03-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax.

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one-half of one percent with respect to accident and health insurance, and one percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and shall be deposited in the general fund in the state treasury.
2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid

* NOTE: Section 26.1-03-17 was also amended by section 1 of House Bill No. 1192, chapter 334.

legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under subsection 1 of section 26.1-38-08, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, and 26.1-03-19 through 26.1-03-22 and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection shall be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

3. After March 1, 1984, any Any person failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of five percent of the amount of tax due or one hundred dollars, whichever is greater, plus six percent of such tax for each day of delay, excepting the first day after the tax became due interest of one percent per month on the unpaid tax for each month or fraction of a month of delay, excepting the first day after the tax became due, or twenty-five dollars per day, whichever is greater. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.
4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment shall be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of either the total tax paid during the previous calendar year, or eighty percent of the actual tax for the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, the amount of overpayment must be credited against any tax due, or to become due, under this section from the taxpayer who made the erroneous payment. The taxpayer who made the erroneous payment must present a claim for credit to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 334

HOUSE BILL NO. 1192
(Committee on Industry, Business and Labor)
(At the request of the Office of Management and Budget)

INSURANCE PREMIUMS TAX RATES

AN ACT to amend and reenact subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the rate of the premium tax on accident and health insurance and property and casualty insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, ~~one-half of~~ one and one-fourth percent with respect to accident and health insurance, and one and one-fourth percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and shall be deposited in the general fund in the state treasury.

Approved April 14, 1987
Filed April 15, 1987

* NOTE: Section 26.1-03-17 was also amended by section 1 of Senate Bill No. 2164, chapter 333.

CHAPTER 335

SENATE BILL NO. 2402
(Mutch)INSURANCE COMPANY EXAMINATION
CONFIDENTIALITY

AN ACT to amend and reenact section 26.1-03-21 of the North Dakota Century Code, relating to the confidentiality of preliminary data generated by the commissioner of insurance in conducting examinations of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-21. Powers of commissioner or person making an examination. For the purposes of making any examination required or authorized by law, the commissioner, or the person making the examination, has free access to all books, papers, and securities of an insurance company relating to its business and to the books and papers kept by any of its agents, and may summon as witnesses and examine under oath the directors, officers, agents, and trustees of any such company and any other person in relation to the company's affairs, transactions, and condition. All preliminary data, drafts, notes, impressions, memoranda, working papers, and work product generated by the commissioner or the person making an examination or inspection pursuant to this chapter are confidential and not open for public inspection until the commissioner releases a final report concerning the examination or inspection or upon a declaration by the commissioner that the material is nonconfidential. If a declaration of nonconfidentiality is requested by any person and denied, the commissioner, in the denial, shall state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when it will be made public.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 336

SENATE BILL NO. 2287
(Yockim)

INSURANCE DISCRIMINATION PRACTICES

AN ACT to create and enact a new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota Century Code, relating to unfair discrimination practices by insurance companies; and to amend and reenact section 26.1-04-05.1 of the North Dakota Century Code, relating to discrimination by insurance companies relating to the visual acuity of policy applicants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 7 of section 26.1-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses his or her eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.

SECTION 2. AMENDMENT. Section 26.1-04-05.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-04-05.1. Visual acuity prohibited as factor in life or accident and sickness contracts. No insurance company, benevolent society, nonprofit health service corporation, or health maintenance organization may issue any policy, certificate, or contract on life, accident and sickness, health services, or health care protection for which visual acuity is used as a criteria for accepting or rejecting risks or for setting of rates charged for that coverage ~~except where the refusal, limitation, or rate differential is based on sound actuarial principles.~~

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 337

SENATE BILL NO. 2097 (Maixner)

UNEARNED INSURANCE PREMIUM REFUNDS

AN ACT to create and enact a new subsection to section 26.1-04-03, a new subsection to section 26.1-33-05, and a new subdivision to subsection 1 of section 26.1-36-04 of the North Dakota Century Code, relating to unfair insurance practices and required insurance premium refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to refund unearned premiums. Failing to refund within thirty days of the cancellation of an insured's policy the unearned premium paid for that insurance policy. However, for commercial lines of insurance policies which are audited by the insurer to determine premium, the refund of premium must be made within thirty days from the date the insurer receives from the insured that information which is reasonably necessary for the insurer to audit the insured's business to determine the premium due to the insurer.

SECTION 2. A new subsection to section 26.1-33-05 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death the proportion of the premium, fee, or other sum as corresponds with the unexpired time upon the amount of policy remaining. This provision does not apply to term life insurance or to any policy where the insurer has a valid defense to the payment of benefits under the policy.

SECTION 3. A new subdivision to subsection 1 of section 26.1-36-04 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death that proportion of the premium, fees, or other sum as corresponds with the unexpired time upon the amount of the policy remaining after deducting any claim for losses during the current term of the policy. This provision does not apply where the insurer has a valid defense to the payment of benefits under the policy.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 338

SENATE BILL NO. 2273
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE COMPANY STOCK AND SURPLUS

AN ACT to amend and reenact sections 26.1-05-04, 26.1-05-32, subsection 4 of section 26.1-12-08, and section 26.1-12-10 of the North Dakota Century Code, relating to the required amount of paid in capital stock and surplus of domestic stock and mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-05-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-04. Capital stock and surplus requirements upon organization of domestic stock company - Exceptions. A stock insurance company may not be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. A domestic stock insurance company may not issue any insurance policy until at least fifty percent of the required capital stock, and all of the required surplus, has been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation. The commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter were less than the minimum requirements provided by this section, the stock insurance company must maintain authorized capital stock and surplus which satisfies the capital stock and surplus requirements in effect at that time. Except as otherwise provided in this section, the total value of paid in capital stock and surplus of a stock insurance company organized under the laws of this state may not at any time be depleted to an amount totaling less than one million dollars.

SECTION 2. AMENDMENT. Section 26.1-05-32 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-32. Impairment of capital or surplus of domestic life company - Determination of deficiency - Notice not to issue policies. If a domestic stock life insurance company's minimum basic paid-in capital or surplus required by section 26.1-05-04 or the minimum basic surplus of a domestic mutual insurance company required by section 26.1-12-10 becomes impaired, the commissioner shall prohibit the company and its agents from issuing new policies until the deficiency is cured. The commissioner shall determine the amount of the deficiency, notify the company of the deficiency and require the company to cure the deficiency, and require the company to file proof thereof with the commissioner within a period specified in the notice. The period may not be less than thirty days nor more than ninety days from the date of issuance of the notice.

SECTION 3. AMENDMENT. Subsection 4 of section 26.1-12-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. It must maintain a surplus of at least ~~five hundred thousand~~ one million dollars, except if the minimum assets and surplus requirements for the company are more than the minimum requirements provided by this subsection at the time the company was originally issued a license to do business, the company may maintain assets and surplus which satisfy the requirements in effect at that time.

SECTION 4. AMENDMENT. Section 26.1-12-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-12-10. Mutual life company - Amount of subscribed insurance required - Surplus required. A mutual life insurance company may not issue a policy until not less than two hundred thousand dollars of insurance in not less than two hundred separate risks have been subscribed for and entered on its books. The commissioner may not issue a certificate of authority for the transaction of business to the company unless it has a surplus of assets over all liabilities of at least ~~five hundred thousand~~ one million dollars. A domestic mutual life insurance company must maintain surplus of at least this amount. If the minimum asset and surplus requirements required by this section are more than the minimum requirements required at the time a company was issued its original certificate of authority, the company must maintain assets and surplus which satisfy the assets and surplus requirements in effect at that time.

Approved March 27, 1987

Filed March 30, 1987

CHAPTER 339

SENATE BILL NO. 2437
(Lips)

CLEARING CORPORATIONS

AN ACT to create and enact a new section to chapter 26.1-05 of the North Dakota Century Code, relating to the authority of domestic insurance companies to participate in clearing corporations and book entry systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Participation in clearing corporations and book entry systems - Rulemaking authority. A domestic insurance company may participate, subject to a written agreement with a custodian and subject to rules adopted by the commissioner regarding such participation, in clearing corporations and the federal reserve book entry system.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 340

HOUSE BILL NO. 1488
(Rydell, Gates)

CHAND PARTICIPATION

AN ACT to amend and reenact subsections 6 and 9 of section 26.1-08-01 of the North Dakota Century Code, relating to the insurance companies that must participate in the comprehensive health association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6 and 9 of section 26.1-08-01 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Insurance company" means a company or organization operating pursuant to chapter 26.1-17, 26.1-18, or 26.1-36, and offering or selling accident and health insurance policies or health care or health service contracts. ~~Insurance company does not include a health maintenance organization.~~
9. "Policy" means insurance, health care plan, or nonprofit health service plan contracts providing benefits for hospital, surgical, and medical care. Policy does not include coverage which is (a) limited to disability or income protection coverage, (b) automobile medical payment coverage, (c) supplemental to liability insurance, (d) designed solely to provide payment on a per diem basis, daily indemnity, or non-expense-incurred basis, or (e) credit accident and health insurance.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 341

HOUSE BILL NO. 1379
(Representatives Ulmer, A. Olson)
(Senator Wogsland)

COMPREHENSIVE HEALTH ASSOCIATION ENROLLMENT

AN ACT to amend and reenact subsection 4 of section 26.1-08-12 of the North Dakota Century Code, relating to enrollment in the plan offered by the comprehensive health association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-08-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first six months of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the date of the application, ~~except that coverage of a preexisting condition during the first six months must be provided upon the insured's payment of an additional premium set by the association and approved by the commissioner.~~ This subsection does not apply to a person who has had continuous coverage under an individual, a family, or group policy for the twelve-month period immediately preceding the filing of an application for nonelective procedures or to a person who is treated by nonelective procedures for a congenital or genetic disease.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 342

HOUSE BILL NO. 1506
(Representatives Wald, Koland, Whalen)
(Senators Tallackson, Lips)

RESIDENT INSURANCE MARKETING

AN ACT to create and enact two new sections to chapter 26.1-39 of the North Dakota Century Code, relating to requiring certain commercial insurance programs to be marketed through resident licensed agents or brokers and to suspension or revocation of license or certificate of authority for noncompliance; and to amend and reenact section 26.1-11-07 of the North Dakota Century Code, relating to signature requirements of resident insurance agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-11-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-11-07. **Countersignature requirement - Commissions - Reciprocity.** Notwithstanding any other provision of this title or policy forms to the contrary, except as provided in section 2 of this Act, there may not be any requirement that an agent resident in this state sign or countersign an insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an agent resident in that state on an insurance policy written by a nonresident agent or nonresident broker of that state, then any insurance policy written by an agent resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an agent resident in this state. An insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an agent resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the agent in that state at the request of a nonresident agent or nonresident broker of that state, then the agent resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident agent in this state

covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance policy.

SECTION 2. A new section to chapter 26.1-39 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Certain property and casualty insurance programs to be marketed through resident agents or brokers - Service fee. All commercial multiple peril or commercial casualty insurance sponsored, endorsed, or promoted by a group, association, or franchise which is issued by an insurer authorized to transact business in this state and which insures any person or property in this state must be marketed through a resident licensed insurance agent of the insurer or a resident licensed insurance broker, as selected by the policyholder. The agent or broker is entitled to receive a service fee of five percent of the annual premium for such insurance marketed through the agent or broker, but is not responsible for collecting the premiums or any charges or fees for the insurance. This section does not apply to bonds, medical malpractice insurance, directors and officers insurance, errors and omissions insurance, insurance on mining operations, insurance of property of religious organizations, insurance on property of institutions, and insurance on rural electric and electrical generating cooperatives, utilities, pipelines, and oil and gas operations.

SECTION 3. A new section to chapter 26.1-39 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Suspension or revocation of certificate or license for noncompliance or for acceptance of a reduced service fee. The commissioner shall suspend or revoke the certificate of authority of any insurer who intentionally fails to comply with this Act. The commissioner may suspend or revoke the license of any resident agent or broker who agrees to accept or who accepts a service fee in an amount less than the service fee provided for in section 2 of this Act, and may suspend or revoke the license of any nonresident agent who seeks to induce or who induces any resident agent into accepting a service fee in an amount less than the service fee provided for in section 2 of this Act.

Approved April 7, 1987

Filed April 9, 1987

CHAPTER 343

HOUSE BILL NO. 1205
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

DEMUTUALIZATION OF INSURANCE COMPANIES

AN ACT to authorize the commissioner of insurance to adopt rules for the demutualization of domestic mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Demutualization of domestic mutual insurance companies - Rules. The commissioner of insurance may adopt rules necessary to provide for the orderly and equitable demutualization of domestic insurance companies. Rules adopted must provide for the requirements to be included in a plan of conversion; guarantee that policyholders receive an equitable share of the surplus or stock, or both, of the company being demutualized; address the compensation paid to any person providing services relating to the proposed demutualization; and establish a procedure for the commissioner's approval of a plan for conversion prior to the adoption of such a plan by the company's policyholders.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 344

HOUSE BILL NO. 1270
(Representatives Skjerven, Nicholas, R. Berg)
(Senators Heigaard, Kelsh)

**FORMATION OF COUNTY MUTUAL INSURANCE
COMPANIES**

AN ACT to amend and reenact section 26.1-13-01 of the North Dakota Century Code, relating to the residence of persons forming a county mutual insurance company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-01. County mutual insurance company - Organization. A corporation for mutual insurance may be formed in accordance with this chapter by any number of persons, not less than fifty, residing in not more than ~~ten~~ fifteen counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, who collectively own property of not less than twenty-five thousand dollars in value which they desire to insure.

Approved March 17, 1987
Filed March 17, 1987

CHAPTER 345

HOUSE BILL NO. 1269
(Representatives Skjerven, Nicholas, R. Berg)
(Senators Heigaard, Kelsch)

COUNTY MUTUAL INSURANCE COMPANY POLICIES

AN ACT to amend and reenact sections 26.1-13-15 and 26.1-25-02 of the North Dakota Century Code, relating to insurance policies issued by a county mutual insurance company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable. A county mutual insurance company may not insure any property beyond the limits of the territory comprised in the formation of the company except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts. A policy may not be issued to exceed five years. A policy may not be issued covering property located within the platted limits of any incorporated city in this state, ~~except that a~~ unless:

1. The policy may be issued ~~providing~~ provides coverage on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof as specified in sections 26.1-13-14 and 26.1-13-16 to existing members within the platted limits of any incorporated city in this state; or
2. The policy issued provides coverage specified in sections 26.1-13-14 and 26.1-13-16 on property located within the platted limits of any incorporated city with a population of less than two thousand five hundred located within the territory comprised in the formation of the company.

The company may insure all property located outside of incorporated cities in this state within the limits of the territory comprised in the formation of the company.

A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

SECTION 2. AMENDMENT. Section 26.1-25-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-25-02. Scope of chapter. This chapter applies to fire, marine, inland marine, hail, windstorm, cyclone, tornado, explosion, water damage, and all other forms of insurance on property, and the loss of use and occupancy thereof, and to casualty insurance, including fidelity, surety, and guaranty bonds, and all other forms of motor vehicle insurance, as defined and set forth in subsections 1, 2, 4, 5, 6, and 7 of section 26.1-12-11 and in subsections 1, 2, 5, 6, and 7 of section 26.1-05-02, except as hereinafter excluded. Inland marine insurance is deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance. This chapter does not apply to:

1. Reinsurance other than joint reinsurance to the extent stated in section 26.1-25-11.
2. Accident and health insurance.
3. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.
4. Insurance against loss or damage to aircraft or against liability, other than workmen's compensation and employers' liability, arising out of ownership, maintenance, or use of aircraft.

This chapter applies to every insurer, including every stock or mutual company, reciprocal or interinsurance exchange, authorized by any provision of the laws of this state to transact any of the kinds of insurance. However, except with respect to policies issued pursuant to subsection 2 of section 26.1-13-15, this chapter does not apply to county mutual insurance companies organized under chapter 26.1-13.

If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory act of this state, an insurer to which both acts are otherwise applicable shall file with the commissioner a designation as to which rate regulatory act is applicable to it with respect to the kind of insurance, subdivision, or combination thereof, or type of coverage.

Approved March 17, 1987
Filed March 17, 1987

CHAPTER 346

HOUSE BILL NO. 1253
(Representatives Skjerven, Nicholas, R. Berg)
(Senators Heigaard, Kelsh)

COUNTY MUTUAL INSURANCE EXPENSE AND LOSS FUND

AN ACT to amend and reenact section 26.1-13-25 of the North Dakota Century Code, relating to the permanent expense and loss fund of a county mutual insurance company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-13-25. Permanent expense and loss fund - Assessment or premiums - Delinquent loss assessments credited. The board of directors of a county mutual insurance company may levy and collect an assessment or may charge premiums on its policies for the purpose of providing funds for the payment of the current expenses of the company or for the purpose of establishing a permanent loss fund. The fund may not exceed ~~two~~ four percent of the amount of insurance in force in the company, except that where a company writes a combined policy of fire and windstorm insurance, it may maintain a permanent loss fund not to exceed ~~four~~ eight percent of the amount of insurance in force in the company. Assessments levied for the purposes specified in this section must be collected as assessments made for the payment of current losses are collected. If a delinquent loss assessment is collected after other assessments to cover the loss have been collected, the amount collected on the delinquent loss assessment must be added to the permanent loss fund.

Approved March 17, 1987
Filed March 17, 1987

CHAPTER 347

SENATE BILL NO. 2376
(Senators Lips, Heigaard)
(Representatives Strinden, Mertens)

FRATERNAL BENEFIT SOCIETIES

AN ACT to create and enact chapter 26.1-15.1 of the North Dakota Century Code, relating to fraternal benefit societies; to amend and reenact section 26.1-16-02 of the North Dakota Century Code, relating to application to fraternal benefit societies; to repeal chapter 26.1-15 of the North Dakota Century Code, relating to fraternal benefit societies; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-15.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-15.1-01. Definitions. Whenever used in this chapter:

1. "Benefit contract" means the agreement for provision of benefits authorized by section 26.1-15.1-16, as that agreement is described in section 26.1-15.1-19.
2. "Benefit member" means an adult member designated by the laws or rules of the society as a benefit member under a benefit contract.
3. "Certificate" means the document issued as written evidence of the benefit contract.
4. "Premiums" means premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.
5. "Laws" means the society's articles of incorporation, constitution and bylaws, however designated, of the society.
6. "Lodge" means subordinate member units of the society, whether known as camps, courts, councils, branches, or by any other designation.

7. "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.
8. "Society" means fraternal benefit society, unless otherwise indicated.

26.1-15.1-02. Fraternal benefit societies. Any incorporated society, order, or supreme lodge without capital stock, including one exempted under subdivision b of subsection 1 of section 26.1-15.1-38 whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is a fraternal benefit society.

26.1-15.1-03. Lodge system defined.

1. A society operates on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated or admitted under its laws, rules, and ritual. Subordinate lodges shall hold regular or stated meetings at least one each month in furtherance of the purposes of the society.
2. A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges may not be required of such children, nor may they have a voice or vote in the management of the society.

26.1-15.1-04. Representative form of government defined. A society has a representative form of government when:

1. It has a supreme governing body constituted in one of the following ways:
 - a. The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members of their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates must constitute a majority in number and have not less than two-thirds of the votes and not less than the number of votes required to amend the laws of the society. The assembly must be elected and meet at least once every four years and must elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the constitution and laws of the society.

- b. The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the constitution or laws of the society. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the constitution or laws of the society. A person filling the unexpired term of an elected board member is considered to be an elected member. Those persons elected to the board must constitute a majority in number and not less than the number of votes required to amend the laws of the society. The board shall meet at least quarterly to conduct the business of the society.
 - 2. The officers of the society may be elected by either the supreme governing body or the board of directors.
 - 3. Only benefit members are eligible for election to the supreme governing body and the board of directors.
 - 4. Each voting member has one vote.
 - 5. No vote may be cast by proxy.
- 26.1-15.1-05. Purposes and owners.
- 1. A society shall operate for the benefit of members and their beneficiaries by:
 - a. Providing benefits as specified in section 26.1-15.1-16.
 - b. Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious purposes for the benefit of its members, which may also be extended to others. Such purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.
 - 2. Every society has the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It has the power to change, alter, add to or amend such laws and rules and such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.
- 26.1-15.1-06. Qualifications for membership.
- 1. A society shall specify in its laws or rules:

- a. Eligibility standards for each class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one.
 - b. The process for admission to membership for each membership class.
 - c. The rights and privileges of each membership class, provided that only benefit members may vote on the management of the insurance affairs of the society.
2. A society may also admit social members who have no voice or vote in the management of the insurance affairs of the society.
 3. Membership rights in the society are personal to the member and are not assignable.

26.1-15.1-07. Location of office - Meetings - Communications to members - Grievance procedures.

1. The principal office of any domestic society must be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory in which the society has at least one subordinate lodge, or in any other location as determined by the supreme governing body, and all business transacted at the meetings is valid in all respects. The minutes of the proceedings of the supreme governing body and of the board of directors must be in the English language.
2.
 - a. A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements must be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.
 - b. Not later than June first of each year, a synopsis of the annual statement of the society providing an explanation of the facts concerning the condition of the society must be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the official publication of the society.

3. A society may provide in its laws or rules for grievance or complaint procedures for members.

26.1-15.1-08. Officers and members not personally liable for benefit contracts.

1. The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by the society.
2. Any society may indemnify and reimburse any person for expenses reasonably incurred by, and liabilities imposed upon, that person in connection with or arising out of any action or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which that person served in any capacity at the request of the society. A person may not be so indemnified or reimbursed in relation to any matter as to which the person is adjudged to be or has been guilty of breach of a duty as a director, officer, employee, or agent of the society unless the person acted in good faith for a purpose the person reasonably believed to be in the best interests of the society and, in a criminal action or proceeding, had no reasonable cause to believe that the conduct was unlawful. The determination whether the conduct of such person met the standard required in order to justify indemnification and reimbursement in relation to any matter may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the matter or by a court of competent jurisdiction. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, does not in itself create a presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law and inures to the benefit of that person's heirs, executors, and administrators.
3. A society may purchase and maintain insurance on behalf of any director, officer, employee, or agent of the society who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against or incurred by that person in any such capacity or arising out of that person's status as such, regardless of whether the society has the power to indemnify the person against such liability under this section.

26.1-15.1-09. Waiver. The laws of the society may provide that no subordinate body nor any of its subordinate officers or members has the power or authority to waive any of the provisions of the laws of the society. The provision is binding on the society and every member and beneficiary of a member.

26.1-15.1-10. Organization. A domestic society organized after December 31, 1987, must be formed as follows:

1. Seven or more citizens of the United States of America, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, which must contain:
 - a. The proposed corporate name of the society, which must not so closely resemble the name of any society or insurance company as to be misleading or confusing.
 - b. The purposes for which it is being formed and the mode in which its corporate powers are to be exercised, within the powers granted by this chapter.
 - c. The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to exercise the general management of the affairs and funds of the society for the first year or until election of officers by the supreme governing body to be held not later than one year from the date of issuance of the permanent certificate of authority.
2. The articles of incorporation, duly certified copies of the bylaws and rules, copies of all proposed forms of certificates, applications therefor, circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year must be filed with the commissioner, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner must be in an amount of not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as required by the commissioner. All documents filed must be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation, and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

3. No preliminary certificate of authority granted under this section is valid after one year from its issuance, except as may be authorized by the commissioner upon cause shown for not more than one additional year, unless the five hundred applicants required under subsection 4 have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings under this chapter become void one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business as hereinafter provided.
4. Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society may incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, offer, or promise to pay any benefit to any person until:
 - a. Actual bona fide applications for benefits have been secured from not fewer than five hundred applicants and any necessary evidence of insurability has been furnished to and approved by the society.
 - b. At least ten subordinate lodges have been established into which the five hundred applicants have been admitted.
 - c. There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, containing their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, and amount of benefits to be granted and premiums thereof.
 - d. It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly premium, which premiums in the aggregate must amount to at least one hundred fifty thousand dollars. The advance premiums must be held in trust during the period of organization and if the society does not qualify for a certificate of authority, the premiums must be returned to the applicants.

5. The commissioner may make such examination and require such further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue to the society a certificate of authority allowing the society to transact business under this chapter. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. A certified copy of the certificate may be given in evidence with like effect as the original certificate of authority.

26.1-15.1-11. Amendments to laws.

1. A domestic society may amend its laws by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. A referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum may be adopted unless, within six months from the date of submission thereof, a majority of the members voting shall have signified their consent to the amendment by one of the methods herein specified.

2. No amendment to the laws of any domestic society may take effect until approved by the commissioner who shall approve the amendment if the commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves an amendment within sixty days after filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for disapproval must be stated in the written notice of denial.

3. Within ninety days after approval by the commissioner of an amendment or a synopsis of it, the society shall furnish a copy of the amendment to all members of the society either by mail or by publication in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopses, stating facts that show the same have been duly addressed and mailed, is prima facie evidence that the amendments or synopses have been furnished to the addressees.

4. Every foreign society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments to its laws within ninety days after enactment.

5. Printed copies of the laws, certified by the secretary or corresponding officer of the society, are prima facie evidence of the legal adoption thereof.

26.1-15.1-12. Institutions.

1. A society may create, maintain, and operate, or may establish organizations to operate, not for profit institutions to further the purposes permitted by section 26.1-15.1-05. The institutions may furnish services free or at a reasonable charge. Any property owned, held, or leased by the society for these purposes must be reported in every annual statement.

2. No society may own or operate funeral homes or undertaking establishments.

26.1-15.1-13. Reinsurance.

1. A domestic society may by reinsurance agreement cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner, but no society may reinsure substantially all of its insurance in force without first obtaining the written permission of the commissioner. A society may take credit for the reserves on such ceded risks to the extent reinsured, but no credit may be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after December 31, 1987, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

2. Notwithstanding the limitation in subsection 1, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under section 26.1-15.1-14.

26.1-15.1-14. Consolidations and mergers.

1. A domestic society may consolidate or merge with any other society by complying with this section. It shall file with the commissioner:

- a. A certified copy of the contract containing in full the terms and conditions of the consolidation or merger.
 - b. A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition of the society on a date fixed by the commissioner but not earlier than December thirty-first next preceding the date of the contract.
 - c. A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society conducted at a regular or special meeting of each or, if the laws of the society permit, by mail.
 - d. Evidence that at least sixty days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.
2. If the commissioner finds that the contract conforms to this section, that the financial statements are correct, and that the consolidation of merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon approval, the contract is in effect unless any society that is a party to the contract is incorporated under the laws of any other state or territory. A consolidation or merger involving a society from another state or territory is not effective until it has been approved as provided by the laws of the other state or territory and a certificate of that approval has been filed with the commissioner.
 3. Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property are vested in the resulting society without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real property vested under the laws of this state in any of the societies consolidated or merged does not revert nor is it in any way impaired by reason of the consolidation or merger, but vests absolutely in the society resulting from the consolidation or merger.
 4. The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees.

26.1-15.1-15. Conversion of fraternal benefit society into mutual life insurance company. Any domestic society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion must be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the conversion plan. No conversion may take effect until approved by the commissioner who may approve the conversion if the commissioner finds that the proposed change conforms to the requirements of law and is not prejudicial to the certificate holders of the society.

26.1-15.1-16. Benefits.

1. A society may provide the following contractual benefits in any form:
 - a. Death benefits.
 - b. Endowment benefits.
 - c. Annuity benefits.
 - d. Temporary or permanent disability benefits.
 - e. Hospital, medical, or nursing benefits.
 - f. Monument or tombstone benefits to the memory of deceased members.
 - g. Other benefits authorized for life insurers which are not inconsistent with this chapter.
2. A society shall specify in its rules those persons who may be covered by the contractual benefits in subsection 1, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult member.

26.1-15.1-17. Beneficiaries.

1. The owner of a benefit contract has the right to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary has or obtains any vested interest in the proceeds of any certificate until the certificate has

become due and payable in conformity with the provisions of the benefit contract.

2. A society may make provision for the payment of funeral benefits to the extent of incurred expense occasioned by the burial of the member, not to exceed the sum of one thousand dollars.
3. If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in subsection 2, is payable to the personal representative of the deceased insured, except that the proceeds shall be payable to the owner of the certificate if the owner was not the insured.

26.1-15.1-18. Benefits not attachable. All money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any society is exempt from liability for debts of the person to or on account of whom the items are paid, provided, or rendered, and are not subject to seizure upon execution or other process.

26.1-15.1-19. The benefit contract.

1. Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, must be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision is void.
2. Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate are binding upon the owner and the beneficiaries and govern and control the benefit contract in all respects the same as though the changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment destroys or diminishes benefits that the society contracted to give the owner as of the date of issuance.
3. Any person upon whose life a benefit contract is issued prior to attaining the age of majority is bound by the

- terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.
4. A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board. If the payment is not made, either the proportionate amount shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or the owner may accept a proportionate reduction in benefits under the certificate, either alone or in combination with an indebtedness against the certificate. The society may specify the manner of the election and which alternative is to be presumed if the member makes no election.
 5. Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, are prima facie evidence of their terms and conditions.
 6. No certificate may be delivered or issued for delivery in this state unless a copy of the form has been filed with and approved by the commissioner in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued after December 31, 1988, must meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificates must also contain a provision stating the amount of premiums which is payable under the certificate and a provision reciting or setting forth the substance of any sections of the laws or rules of the society in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate must also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, has the privilege of maintaining the certificate in force by continuing payment of the required premium.

7. Benefit contracts issued on the lives of persons below the minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government, and control of the certificates and all rights, obligations, and liabilities incident thereto. Ownership rights prior to transfer of control or ownership must be specified in the certificate.

8. A society may specify the terms and conditions on which benefit contracts may be assigned.

26.1-15.1-20. Nonforfeiture benefits, cash surrender values, certificate loans and other options.

1. For certificates issued before January 1, 1989, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable immediately before January 1, 1988.

2. For certificates issued after December 31, 1988, for which reserves are computed on the commissioners' 1958 standard ordinary mortality table or the commissioners' 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon those tables.

26.1-15.1-21. Investments. A society may invest its funds only in investments authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, meets the requirements of this section for the investment of funds.

26.1-15.1-22. Funds.

1. All assets must be held, invested, and disbursed for the use and benefit of the society and no member or beneficiary has or acquires individual rights therein or becomes entitled to any apportionment on the surrender of any part thereof except as provided in the benefit contract.

2. A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.
3. A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing such accounts and issuing such contracts. To the extent the society determines it to be necessary in order to comply with any applicable federal or state laws or rules, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may provide special voting and other rights for persons having beneficial interests in those accounts, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which subsections 2 and 4 of section 26.1-15.1-19 do not apply.

26.1-15.1-23. Exemption from insurance laws. Societies are governed by this chapter and are exempt from all other provisions of the insurance laws of this state, except as expressly designated therein or as specifically made applicable by this chapter.

26.1-15.1-24. Taxation. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds are exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment.

26.1-15.1-25. Valuation.

1. Standards of valuation for certificates issued before January 1, 1989, are those provided by the laws applicable immediately before January 1, 1988.
2. The minimum standards of valuation for certificates issued after December 31, 1988, are based on the following tables:
 - a. For certificates of life insurance - the commissioners' 1958 standard ordinary mortality table, the commissioners' 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers.
 - b. For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits - tables authorized for use by life insurers in this state.

All of the above must be under valuation methods and standards, including interest assumptions, in accordance with chapter 26.1-35.

3. The commissioner may accept other standards for valuation if the commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.
4. Any society, with the consent of the insurance department of the state of domicile of the society and under conditions, if any, which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member may not be affected thereby.

26.1-15.1-26. Reports. Reports must be filed in accordance with this section.

1. Every society transacting business in this state shall annually on or before the first day of March file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay the fee prescribed by section 26.1-01-07. The statement must be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by the commissioner.
2. As part of the annual statement, each society shall on or before the first day of March file with the commissioner a valuation of its certificates in force on the preceding December thirty-first. The commissioner may for cause shown extend the time for filing the valuation report for not more than two calendar months. The valuation must be done in accordance with the standards specified in section 26.1-15.1-25. The valuation and underlying data must be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the insurance department of the state of domicile of the society.
3. A society neglecting to file the annual statement in the form and within the time provided by this section must forfeit one hundred dollars for each day during which the neglect continues and, upon notice by the commissioner to that effect, its authority to do business in this state ceases while the default continues.

26.1-15.1-27. Annual license. The authority of every society annually terminates on April thirtieth and may be renewed. A license continues in full force and effect until the new license is issued or specifically refused. For each license or renewal the society shall before April first pay the commissioner the fee established under section 26.1-01-07. A duly certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit society.

26.1-15.1-28. Examination of societies.

1. The commissioner may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers are applicable to the examination of societies.
2. The expense of each examination and of each valuation, including compensation and actual expense of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

26.1-15.1-29. Foreign or alien society - Admission. No foreign society may transact business in this state without a license issued by the commissioner. Any foreign society desiring admission to this state shall comply with the requirements and limitations of this chapter applicable to domestic societies. Any foreign society may be licensed to transact business in this state upon filing with the commissioner:

1. A duly certified copy of its articles of incorporation;
2. A copy of its bylaws, certified by its secretary or corresponding officer;
3. A power of attorney to the commissioner as required under section 26.1-15.1-35;
4. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;
5. Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;
6. Copies of its certificate forms; and

7. Such other information as the commissioner may deem necessary.

The foreign society must also show that its assets are invested in accordance with this chapter.

26.1-15.1-30. Injunction - Liquidation - Receivership of domestic society.

1. The commissioner shall notify the society of the deficiency or deficiencies stating in writing the reasons for the commissioner's dissatisfaction and requiring that the deficiency or deficiencies be corrected, if the commissioner upon investigation finds that a domestic society has committed any of the following acts:
 - a. Exceeded its powers.
 - b. Failed to comply with any provision of this chapter.
 - c. Not fulfilled any of its contracts in good faith.
 - d. Has a membership of less than four hundred after an existence of one year or more.
 - e. Conducted business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

After notice the society has a thirty-day period in which to comply with the commissioner's request for correction. If the society fails to comply the commissioner shall notify the society of noncompliance and require the society to show cause on a date specified why it should not be enjoined from carrying on any business until the violations complained of have been corrected or why an action in quo warranto should not be commenced against the society.

2. If the society does not present good and sufficient reasons why it should not be so enjoined or why an action in quo warranto should not be commenced, the commissioner may present the facts to the attorney general who may commence an action to enjoin the society from transacting business or in quo warranto.
3. The attorney general shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined may do business until:

- a. The commissioner finds that the violation complained of has been corrected;
 - b. The costs of the action have been paid by the society if the court finds that the society was in default as charged;
 - c. The court has dissolved its injunction; and
 - d. The commissioner has reinstated the certificate of authority.
4. If the court orders the society liquidated, it must be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.
 5. No action under this section may be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner or the commissioner's designee as receiver.
 6. The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership are applicable to a society that voluntarily determines to discontinue business.

26.1-15.1-31. Suspension, revocation, or refusal of license of foreign society.

1. If the commissioner upon investigation finds that a foreign society transacting or applying to transact business in this state has committed any of the acts set forth in subdivision a, b, c, or e of subsection 1 of section 26.1-15.1-30, the commissioner shall notify the society of the deficiency or deficiencies stating in writing the reasons for the commissioner's dissatisfaction and requiring that the deficiency or deficiencies be corrected. After the notice the society has a thirty-day period in which to comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of noncompliance and require the society to show cause on a date specified why its license should not be suspended, revoked, or refused. If the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may suspend or refuse the license of the society to do

business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn or the commissioner may revoke the authority of the society to do business in this state.

2. This section does not prevent any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state.

26.1-15.1-32. Injunction. No application or petition for injunction against any domestic, foreign, or alien society, or lodge thereof, may be recognized in any court of this state unless made by the attorney general upon request of the commissioner.

26.1-15.1-33. Licensing of agents. Agents of societies must be licensed under chapter 26.1-26.

26.1-15.1-34. Unfair methods of competition and unfair and deceptive acts and practices. Every society authorized to do business in this state is subject to the provisions of chapter 26.1-04 relating to unfair trade practices, except that nothing in those provisions may be construed as applying to or affecting the right of any society to determine eligibility requirements for membership or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

26.1-15.1-35. Service of process.

1. Every society authorized to do business in this state shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it may be served and agrees that any lawful process against it which is served on the commissioner is of the same legal force and validity as if served upon the society. The authority continues in force so long as any liability of the society remains outstanding in this state. Copies of the appointment, certified by the commissioner, are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original.
2. Service may be made only upon the commissioner or upon any person in charge of the commissioner's office. It must be made in duplicate and constitutes sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forthwith forward one of the duplicate copies by registered mail, postage prepaid, directed to the secretary or corresponding officer. No service may require a society to file its answer, pleading, or defense

in less than twenty days from the date of mailing the copy of the service to a society. Legal process may not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee specified in section 26.1-01-07.

26.1-15.1-36. Penalties.

1. Any person who willfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society is guilty of a class A misdemeanor.
2. Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate is guilty of a class C felony.
3. Any person who solicits membership for or in any manner assists in procuring membership in any society not licensed to do business in this state is guilty of an infraction.

26.1-15.1-37. Exemption of certain societies.

1. Except as otherwise provided, this chapter does not affect or apply to:
 - a. Grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges.
 - b. Orders, societies, or associations that admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and auxiliaries to such orders, societies, or associations.
 - c. Domestic societies that limit their membership to employees of a particular city, designated firm, business house, or corporation which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than three hundred fifty dollars to any person in any one year, or both.
 - d. Domestic societies or associations of a purely religious, charitable, or benevolent description which

provide for a death benefit of not more than four hundred dollars or for disability benefits of not more than three hundred fifty dollars to any one person in any one year, or both.

2. Any society or association described in subdivision c or d of subsection 1 which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subdivision d of subsection 1 which has more than one thousand members, is not exempt from this chapter but shall comply with all requirements thereof.
3. No society that, by this section, is exempt from the requirements of this chapter, except any society described in subdivision d of subsection 1, may give, allow, or promise to give or allow to any person any compensation for procuring new members.
4. Every society that provides for benefits in case of death or disability resulting solely from accident and which does not obligate itself to pay natural death or sick benefits has all of the privileges and is subject to all the applicable provisions of this chapter, except that the provisions relating to medical examination, valuations of benefit certificates, and incontestability, do not apply to such society.
5. The commissioner may require from any society or association, by examination or otherwise, information to enable the commissioner to determine whether such society or association is exempt from this chapter.
6. Societies exempted under this section are also exempt from all other provisions of the insurance laws of this state.

SECTION 2. AMENDMENT. Section 26.1-16-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-16-02. Chapter not applicable to fraternal benefit society. This chapter does not apply to a fraternal benefit society as defined in chapter ~~26-1-15~~ 26.1-15.1 nor to a benefit society organized within and limited to members of a fraternal benefit society.

SECTION 3. APPLICATION TO EXISTING FRATERNAL BENEFIT SOCIETIES. Any incorporated fraternal benefit society authorized to transact business in this state on January 1, 1988, is not required to reincorporate under this Act. A fraternal benefit society authorized to transact business in this state on January 1, 1988, may continue business until May 1, 1988, after which the society must obtain the license required by section 26.1-15.1-27.

SECTION 4. REPEAL. Chapter 26.1-15 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective January 1, 1988.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 348

SENATE BILL NO. 2174
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

NONPROFIT HEALTH SERVICE CORPORATION DIRECTORS

AN ACT to amend and reenact section 26.1-17-04 of the North Dakota Century Code, relating to the directors of nonprofit health service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-17-04. Directors - Responsibilities and qualifications. A board of directors must manage the business and affairs of a health service corporation. The board is to consist of at least nine members. The qualifications of the members are as follows-

- 1- A majority of the directors of a health service corporation must be persons who are providers of health services or representatives of partnerships, corporations, or associations which are providers of health services which have contracted with the health service corporation to render health services to its subscribers. If a health service provider is not an individual, its representative, who serves as a member of the board of directors, must be a director, trustee, hospital administrator, officer, partner, or member of the clinical staff of the health service provider.
- 2- The balance of the directors must be persons who are subscribers for health services and who have no direct affiliation with any of the health service providers.
- 3- Directors may be physicians who are affiliated with or are members of the same health service providers. However, a director who is not a physician may not be affiliated with or be a member of the same health service provider as another director.
- 4- Additional qualifications for directors may be set forth in the articles of incorporation or the bylaws of the health service corporation.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 349

HOUSE BILL NO. 1463
(Rydell, Hamerlik)

CONVERSION TO MUTUAL INSURANCE COMPANY

AN ACT to authorize the conversion of nonprofit health service corporations into mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Nonprofit health service corporation - Conversion to mutual insurance company. Any nonprofit health service corporation organized under chapter 26.1-17, having admitted assets in excess of all liabilities at least equal to the original surplus required of a mutual insurance company by section 26.1-12-10, may without reincorporation, and upon adoption of a resolution by its board of directors, petition the commissioner of insurance for an order to become a mutual insurance company subject to chapter 26.1-12. For the purpose of obtaining approval from the commissioner of insurance, conversion to a mutual insurance company under this section is deemed a consolidation pursuant to chapter 26.1-07 and the procedure described therein must be followed. Upon becoming subject to chapter 26.1-12, the company may continue to provide health care and related services to its present or future members and subscribers by health care contracts and may make provision for the payment of health care services directly to hospitals and other agencies or institutions or persons rendering health care services or related services or may make direct payment to the member or subscriber. The conversion of a nonprofit health service corporation into a mutual insurance company must not impair the rights or obligations of any existing contractual rights of a health care service corporation or its members.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 350

HOUSE BILL NO. 1355
(Schneider, Kretschmar)

HEALTH MAINTENANCE ORGANIZATION PROCEDURES

AN ACT to amend and reenact section 26.1-18-04, subsection 4 of section 26.1-25-04, section 26.1-30-20, and subsection 1 of section 26.1-30-21 of the North Dakota Century Code, relating to the period of time in which the commissioner must approve insurance policies, rates, and notices of modification relating to the operation of a health maintenance organization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-18-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-18-04. Notice of modification - Filing. A health maintenance organization must, unless otherwise provided in this chapter, file a notice describing any modification of the operation set out in the information required by section 26.1-18-03. The notice must be filed with the commissioner prior to effecting the modification. If the commissioner does not disapprove within fifteen days of the filing within the time period provided for approval in section 26.1-30-20, the modification is deemed approved.

The commissioner may adopt rules exempting those items the commissioner deems unnecessary from the filing requirements of this section.

SECTION 2. AMENDMENT. Subsection 4 of section 26.1-25-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Subject to the exceptions specified in subsection 5, each filing ~~shall~~ must be on file for a waiting period of ~~thirty~~ sixty days before it becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the

insurer or rating organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

SECTION 3. AMENDMENT. Section 26.1-30-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-30-20. Procedure for approval, disapproval, and withdrawal of approval by commissioner. No insurance policy, certificate, contract, agreement, or rate schedule, except as is otherwise provided, may be issued, nor may any application, rider, or endorsement be used in connection therewith until the expiration of ~~thirty~~ sixty days after it has been filed unless the commissioner gives written approval. The commissioner may extend the ~~thirty-day~~ sixty-day period for an additional period not to exceed fifteen days if the commissioner gives written notice within the ~~thirty-day~~ sixty-day period to the insurer which made the filing that the commissioner needs the additional time for the consideration of the filing.

SECTION 4. AMENDMENT. Subsection 1 of section 26.1-30-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If the commissioner disapproves any form, the commissioner shall notify the company or organization which filed the form within ~~thirty~~ sixty days after filing or within the additional period provided for in section 26.1-30-20 and provide written notice of disapproval of the form, specifying the reasons for disapproval and stating that a hearing may be requested in writing within forty-five days. No company or organization may issue any insurance policy in the form which has been disapproved. If a hearing is requested, the commissioner may suspend or postpone the effective date of disapproval.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 351

HOUSE BILL NO. 1446
(Representative Strinden)
(Senator Heigaard)

DEFENSE OF STATE EMPLOYEES

AN ACT to create and enact two new sections to chapter 26.1-21 of the North Dakota Century Code, relating to expenses paid from the state bonding fund for the defense of state employees and assessments against state agencies for the expenses of defending state employees; to amend and reenact section 32-12.1-15 of the North Dakota Century Code, relating to authorization for state agencies to purchase insurance upon approval by the commissioner of insurance; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-21 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

State employee defense - Expenses withdrawn by attorney general. The attorney general may withdraw from the state bonding fund those amounts, not exceeding a total of two hundred fifty thousand dollars, necessary to pay the costs of the defense of employees of the state provided a defense under this Act.

SECTION 2. A new section to chapter 26.1-21 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

State employee - Defense.

1. As used in this section, unless the context or subject matter otherwise requires:
 - a. "Employee of the state" means all present or former officers or employees of the state or any of its agencies, departments, boards, or commissions, or persons acting on behalf of such agencies, departments, boards, or commissions in an official capacity, temporarily or permanently, with or without

compensation. The term does not include an independent contractor.

- b. "Scope of office or employment" means the officer or employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned to the employee by competent authority. Actions of an employee which constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct are not within the scope of the employee's office or employment for purposes of this chapter.
- c. "State" means the state of North Dakota and each of its agencies, departments, boards, commissions, and offices.
2. The state of North Dakota shall defend any employee of the state in connection with any civil claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring heretofore or hereafter during the employee's period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand, and if the actions complained of were within the scope of the employee's employment. The head of the agency, department, board, or commission that employs the employee shall advise the attorney general as to whether it deems the employee's actions which are the subject of the action to have been within the scope of the employee's employment. The determination of whether an employee of the state was acting within the scope of the employee's employment must be made by the attorney general. If the attorney general determines that the employee was acting within the scope of the employee's employment, the state shall provide the employee with a defense by or under the control of the attorney general or the attorney general's assistants. This section may not be construed as a waiver, limitation, or modification of any existing immunity or other defenses of the state or any of its agencies, departments, commissions, boards, officers, or employees, nor may it be construed as creating any causes of action against any of these entities. Nothing provided by this section may be construed to be insurance within the meaning of section 32-12.1-15.

SECTION 3. AMENDMENT. Section 32-12.1-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-15. State agencies authorized to purchase insurance - Approval by commissioner of insurance.

1. The After review by the commissioner of insurance and after receiving the commissioner's approval, the state or

any state agency, bureau, or department may insure against liabilities provided by this chapter for its own protection and or for the protection of any state employee. If a premium savings will result therefrom and the commissioner of insurance approves, the insurance policies may be taken out for more than one year, but in no event beyond a period of five years. No purchase of insurance pursuant to this section may be construed as a waiver of any existing immunity to suit.

2. If the state or any state agency, bureau, or department shall purchase insurance pursuant to this section, the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of the coverage. Provided, the purchaser or its insurance carrier is not liable for claims arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
3. The insurance coverage authorized by this chapter may be in addition to insurance coverage which may be purchased by the state or any state agency, bureau, or department, or a political subdivision, under any other provision of law.
4. The attorney general shall appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court in this state or of the United States when the agency, bureau, or department employing the employee has not purchased liability insurance coverage pursuant to law. If both parties to an action are state employees, the attorney general shall determine which state employee the attorney general shall represent, and the other employee may employ counsel to represent the employee. If one of the adverse parties is a state agency, bureau, or department, the attorney general shall appear and defend the agency, bureau, or department in the manner otherwise provided by law.

No employee of the state may be held liable in the employee's personal capacity for actions or omissions occurring within the scope of the employee's employment unless such actions or omissions constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct.

SECTION 4. APPROPRIATION - EMERGENCY COMMISSION. There is hereby appropriated to the attorney general out of the state bonding fund the sum of \$250,000, or so much thereof as may be necessary, for the purpose of providing the defense services as may be required under section 1 of this Act. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1987, and ending June 30, 1989, to approve the transfer of funds hereby appropriated from the state bonding fund to the extent necessary and based upon applications therefor by the attorney general. Funds appropriated hereby and authorized to be transferred to the attorney general must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-first legislative assembly.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 352

HOUSE BILL NO. 1428
(Representatives Gerntholz, V. Olson)
(Senator Kelly)

WINTER SHOW INSURANCE

AN ACT to amend and reenact sections 26.1-22-01, 26.1-22-02, 26.1-22-05, 26.1-22-06, 26.1-22-09, 26.1-22-10, 26.1-22-11, 26.1-22-14, 26.1-22-15, 26.1-22-18, and 26.1-22-22 of the North Dakota Century Code, relating to a winter show obtaining insurance through the state fire and tornado fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Fund" means the state fire and tornado fund.
2. "Permanent contents" refers only to such public property usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. Permanent contents includes similar property owned by a winter show. Permanent contents does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.
3. "Political subdivision" includes a county, city, township, school district, or park district of this state.
4. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 2. AMENDMENT. Section 26.1-22-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-02. State fire and tornado fund under management of commissioner. The commissioner shall manage the fund. The fund shall be maintained as a fund to insure the various state industries ~~and~~, the various political subdivisions, and any winter show against loss to the public buildings, or buildings owned by a winter show, and fixtures and permanent contents therein, through fire, lightning, inherent explosion, windstorm, cyclone, and tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, and at the option of the insured the fund shall have the authority to insure against any other risks of direct physical loss. All moneys collected under this chapter shall be paid into the fund for use only for the purposes provided for in this chapter.

SECTION 3. AMENDMENT. Section 26.1-22-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-05. Public buildings insurable only in fund. The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries, and the political subdivisions, ~~shall~~ must, and the buildings and fixtures and the permanent contents therein belonging to a winter show, may be insured under this chapter. No officer or agent of the state or of any political subdivision, and no person having charge of any public buildings belonging to the state, any state industry, or any political subdivision, may pay out any public moneys or funds on account of any insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, or contract in any manner for, or incur any indebtedness against, the state or any political subdivision on account of any such insurance upon any of the buildings or fixtures and permanent contents therein belonging to the state or any political subdivision, except in the manner provided in this chapter.

SECTION 4. AMENDMENT. Section 26.1-22-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values for state-owned property. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, ~~and commissions~~, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to a winter show for insurance coverage as authorized by law.

SECTION 5. AMENDMENT. Section 26.1-22-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-09. ~~Public buildings~~ Buildings to be reported to commissioner. In each odd-numbered year, or upon application for insurance, the state board of higher education, and each officer, department, or agent of the state and of any industry thereof having in charge any public building belonging to the state, ~~and~~ each county auditor, city auditor, township clerk, and school district clerk, as the case may be, ~~and the agent for a winter show, if applicable,~~ shall report to the commissioner the insurable value of each public building, ~~or of each building owned by a winter show with the exception of buildings insured by private insurance companies,~~ and of the fixtures and permanent contents therein, with the exception of fixtures and permanent contents insured by private insurance companies, belonging to the state ~~or~~, political subdivision, ~~or a winter show,~~ and shall supply such other information as may be required by the commissioner on forms provided by the commissioner.

SECTION 6. AMENDMENT. Section 26.1-22-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-10. Commissioner to provide insurance on all public buildings. Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund, on all buildings owned by the state, state industries, ~~and~~ political subdivisions, and winter shows, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as the value is determined by the commissioner and approved by the officer or board having control of such property, or, in case of disagreement, by approval through arbitration.

All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which shall be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

SECTION 7. AMENDMENT. Section 26.1-22-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-11. Arbitration. In case the commissioner and the board or officer having charge of any property are unable to agree upon the insurable value of the property, the value shall be determined by a recognized appraisal company at the expense of the state industry ~~or~~, political subdivision, or a winter show owning the property, if the appraisal company arbitrator meets with the approval of both the commissioner and the board or officer concerned. If they are unable to agree on an arbitrator, then the matter shall be submitted to arbitration by a board of arbitration selected as provided by this section. The commissioner and the board or officer in charge of the property each shall select one competent, disinterested contractor, architect, experienced appraiser, appraisal company, or one of the members of such board, and the two so chosen shall select a third person of similar qualification. The three arbitrators shall proceed to determine the insurable value of the property, and the decision of the arbitrators, or a majority of them, shall be given in writing to the commissioner and the board or officials concerned and shall be binding upon both parties. Each party to the dispute shall pay the expense and charges of the arbitrator chosen by the party, and the expense and the charges of the third arbitrator shall be borne equally by both parties to the dispute. The decision by the board of arbitration must be made within thirty days from the time the matter is submitted to it. Until the commissioner and board or officer in charge shall have agreed, or in case of dispute, until the decision of the appraisal company or arbitrators, the property shall continue to be valued in the same amount as previously, or in case of new buildings or property, in the amount fixed by the commissioner. The same procedure shall be followed in case of new construction or in any increase or decrease in values.

SECTION 8. AMENDMENT. Section 26.1-22-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-14. Assessments and reporting of premiums and losses. If the reserve balance is less than twelve million dollars, the commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars and the commissioner shall then levy an assessment against every policy in force with the fund on all public property or property belonging to a winter show. The assessment shall be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property to which the eighty percent or ninety percent coinsurance rate may be applicable, and the full rate established for properties to which the eighty percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, shall be applied to

the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance shall set the tentative assessment to be made against the policy. The total of all tentative assessments shall then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars shall then be computed and collected on each policy; provided, that until the reserve balance shall reach twelve million dollars, the assessment shall be in an amount determined by the commissioner but in no event in excess of sixty percent of the rates set by the insurance services office unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent shall be used in such computation.

The commissioner shall submit not later than December thirty-first of each odd-numbered year, all data concerning premiums written and losses incurred during the previous biennium ending July thirty-first to the insurance services office so that the experience of the fund may be included in the computation of rates to apply to the classes of business written by the fund.

SECTION 9. AMENDMENT. Section 26.1-22-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-15. Collection of premiums and assessments. The commissioner, as soon as possible after providing for the insurance of any property belonging to the state ~~or~~, a political subdivision, or a winter show, shall certify to the board or officer in charge of the property the amount of premium or assessment due from the state, state industry, ~~or~~ political subdivision, or a winter show. The certificate must give the name, location, and description of the property insured, the amount of insurance written thereon, and the amount of the premium or assessment. The proper officer shall remit to the commissioner the amount of the premium or assessment within sixty days after the date of the certification. The commissioner shall deposit the premiums and assessments with the state treasurer to the credit of the fund. If the premiums or assessments are not paid within sixty days after the date on which they are certified, they shall bear interest at the rate of six percent per annum and collection thereof may be enforced by appropriate action. The attorney general and the state's attorney of the several counties shall bring appropriate actions to enforce the collections of the premium and assessment upon request of the commissioner. Payment of the premiums or assessments certified pursuant to this section may be made by any state department, officer, board, institution, or agency and by any political subdivision, out of any available funds, notwithstanding that no specific appropriation or tax levy has been made therefor.

SECTION 10. AMENDMENT. Section 26.1-22-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-18. **Arbitration of loss.** In case an agreement as to the amount of loss sustained by any building or property insured under this chapter cannot be arrived at between the commissioner or the commissioner's representative and the person or board representing the state ~~or~~, political subdivision, or a winter show owning the building or property, the loss may be arbitrated as provided by law.

SECTION 11. AMENDMENT. Section 26.1-22-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-22. **Commissioner may waive subrogation rights during construction.** The commissioner may, in the commissioner's discretion, waive any right of the fund to recover for damage sustained by any ~~public~~ structure as a result of fire or explosion caused by a contractor, its employees or agents, in the performance of a contract for the alteration of, or the construction of an addition to, a ~~public~~ building insured in the fund.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 353

SENATE BILL NO. 2095
(Senator Nalewaja)
(Representative Koland)

INSURANCE PREMIUMS DISCLOSURE

AN ACT to amend and reenact section 26.1-25-04.1 of the North Dakota Century Code, relating to discounts from certain motor vehicle insurance premiums and disclosure of the amounts of the discounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-25-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-25-04.1. Motor vehicle insurance rate filings - Premium reduction for accident prevention course completion. All rate filings with the commissioner for motor vehicle liability and physical damage insurance must provide for an appropriate reduction in premium charges for those persons fifty-five years of age and older for at least a two-year period following their successful completion of a motor vehicle accident prevention course. The reduction in premium charges must be separately disclosed. The premium billing must disclose the reduction in premium charges with respect to the person eligible for the reduction. The course must be approved by the superintendent of the state highway patrol. The course sponsor shall provide each successful participant a certificate which is the basis for the insurance discount.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 354

SENATE BILL NO. 2484
(Senators Wogsland, Krauter, Nething)
(Representatives Laughlin, Scherber, Gerntholz)

INSURANCE AGENT CONTINUING EDUCATION

AN ACT to amend and reenact section 26.1-26-31.1 of the North Dakota Century Code, relating to continuing education requirements of insurance agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26-31.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-26-31.1. Continuing education required.

1. Beginning January 1, 1987 Except as otherwise provided in this section, any person licensed as an insurance agent, insurance broker, surplus lines insurance broker, or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom work hours. The commissioner may reduce the minimum number of hours per year of approved coursework for any person having a license limited to a single line of insurance as described in section 26.1-26-11. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over ~~fifteen~~ the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at

the end of each four-year period following licensure, except as provided in subsection 2.

2. ~~On or before January 1, 1986, the~~ The commissioner shall by rule divide the persons subject to this section into four equal segments for the purpose of reporting, as follows:
 - a. One-fourth of the persons shall file their report showing fifteen at least the minimum number of required hours or more of approved coursework for the first year under this section within thirty days of January 1, 1987.
 - b. One-fourth of the persons shall file a report showing thirty at least the minimum number of required hours or more of approved coursework for the first two years under this section within thirty days of January 1, 1988.
 - c. One-fourth of the persons shall file a report showing forty-five at least the minimum number of required hours or more of approved coursework for the first three years under this section within thirty days of January 1, 1989.
 - d. One-fourth of the persons shall file a report showing sixty at least the minimum number of required hours or more of approved coursework for the first four years under this section within thirty days of January 1, 1990.
3. All persons licensed after January 1, 1987, shall report within thirty days of the first day of January of the year following the fourth anniversary of the person's licensure.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 355

HOUSE BILL NO. 1411
(Representatives Opedahl, Schneider, Flaagan)
(Senator Redlin)

INSURANCE AGENT CONTACT WITH COMPLAINANT

AN ACT to create and enact a new subsection to section 26.1-26-42 of the North Dakota Century Code, relating to the causes for suspension or revocation of insurance agents' licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-26-42 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 356

SENATE BILL NO. 2422
(Senator Lips)
(Representatives Whalen, Wald)

INDEPENDENT INSURANCE AGENT CONTRACTS

AN ACT to regulate the termination of independent insurance agent contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. For the purposes of this Act an "independent insurance agent" means any licensed property and casualty insurance agent representing a property and casualty insurance company on an independent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place property and casualty insurance accounts with any insurance company or group of companies. This Act only applies to contracts which have been in effect for more than one year between an independent insurance agent and a property and casualty insurance company.

SECTION 2. Agent and company rehabilitation. In an effort to avoid termination, a property and casualty insurance company and an independent insurance agent may endeavor to reach mutual agreement on a written plan for rehabilitation for a period of time agreed upon by them. Any written plan agreed upon must identify the problem areas and specify what the agent must do in order to avoid termination.

SECTION 3. Notice of termination. Contracts between an independent insurance agent and any property and casualty insurance company may not be terminated or amended by the company except by mutual agreement or unless ninety-day prior written notice has been provided to the independent insurance agent. The rate of commission and renewal terms must be in accordance with those in effect immediately prior to the termination.

SECTION 4. Termination of agents for cause - Exceptions. This Act does not apply to terminations for abandonment, insolvency of the terminating company, gross and willful misconduct, refusal, suspension, revocation, or termination of the agent's license by the commissioner of insurance, sale or material change or ownership of agency, fraud, material misrepresentation or failure to pay an independent insurance agent's account less the independent insurance agent's commission and any disputed items within thirty days after written demand by the company.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 357

HOUSE BILL NO. 1514
(Representatives Whalen, Wald)
(Senators Mutch, Dotzenrod)

INSURABLE INTEREST

AN ACT to create and enact a new section to chapter 26.1-29 of the North Dakota Century Code, relating to insurable interest in personal insurance; and to repeal section 26.1-29-09 of the North Dakota Century Code, relating to insurable interest in life and health insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-29 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Insurable interest in personal insurance.

1. An individual of competent legal capacity may procure or effect an insurance contract upon that individual's own life or body for the benefit of any person. No person may procure or cause to be procured an insurance contract upon the life or body of another person unless the benefits under the contract are payable to the individual insured or that individual's personal representatives, or to a person having, at the time the contract was made, an insurable interest in the individual insured.
2. If the beneficiary, assignee, or other payee under a contract made in violation of this section receives from the insurer any benefits from the contract upon the death, disablement, or injury of the individual insured, the individual insured or that individual's executor or administrator may maintain an action to recover the benefits from the person receiving them.
3. "Insurable interest", with reference to personal insurance, includes only the following interests:

- a. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.
- b. In the case of persons other than those described in subdivision a, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
- c. An individual party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in the shares, has an insurable interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest which may otherwise exist as to the life of the individual.

SECTION 2. REPEAL. Section 26.1-29-09 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 358

HOUSE BILL NO. 1579
(Wald)

AUTO INSURANCE RESCISSION

AN ACT to amend and reenact section 26.1-29-15 of the North Dakota Century Code, relating to rescission of insurance contracts due to concealment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-29-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-29-15. Rescission for concealment. A concealment, whether intentional or unintentional, entitles the injured party to rescind an insurance contract. An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind. This section does not apply to automobile insurance policies, but such policies are subject to cancellation as provided in section 26.1-40-02.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 359

HOUSE BILL NO. 1452
(Representatives Wald, Dorso, Enget)
(Senators Tallackson, Lips)

COMMERCIAL LIABILITY INSURANCE

AN ACT to provide notice requirements for the cancellation and nonrenewal of commercial liability insurance; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Application. This Act applies to policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise except workmen's compensation policies, private passenger automobile policies, inland marine policies, excess umbrella liability policies, errors and omissions policies, and officers and directors liability policies.

SECTION 2. Mid-term cancellation of liability insurance. No insurer may cancel a policy of commercial liability insurance during the term of the policy, except for one or more of the following reasons:

1. Nonpayment of premiums;
2. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy;
3. Actions by the insured that have substantially increased or substantially changed the risk insured;
4. Refusal of the insured to eliminate known conditions that increase the potential for loss after notification by the insurer that the condition must be removed;
5. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;
6. Loss of reinsurance by the insurer which provided coverage to the insurer for a significant amount of the underlying

risk insured. Any notice of cancellation pursuant to this subsection must advise the policyholder that the policyholder has ten days from the date of receipt of the notice to appeal the cancellation to the insurance commissioner and that the commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within five business days after receipt of the appeal;

7. A determination by the insurance commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or
8. Nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing such insurance; except this provision for cancellation for failure to pay dues does not apply to persons who are retired at sixty-two years of age or older or to any person who is disabled according to social security standards.

SECTION 3. Notice. Cancellation under subsections 2 through 8 of section 2 of this Act is not effective prior to thirty days after notice to the policyholder. The notice of cancellation must contain a specific reason for cancellation as provided in section 2 of this Act. A policy may not be canceled for nonpayment of premium pursuant to subsection 1 of section 2 of this Act unless the insurer, at least ten days prior to the effective cancellation date, has given notice to the policyholder of the amount of premium due and the due date. The notice must state the effect of nonpayment by the due date. No cancellation for nonpayment of premium is effective if payment of the amount due is made prior to the effective date set forth in the notice.

SECTION 4. New policies. Sections 2 and 3 of this Act do not apply to insurance policies which have been in effect less than ninety days at the time the notice of cancellation is mailed or delivered. No cancellation under this section is effective until at least ten days after the written notice to the policyholder.

SECTION 5. Longer term policies. A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer for the reasons stated in section 2 of this Act by giving a notice as required by section 3 of this Act at least thirty days prior to any anniversary date.

SECTION 6. Nonrenewal of commercial liability insurance policies - Notice required - Exceptions.

1. An insurer shall renew the policy, unless at least thirty days prior to the date of expiration provided in the policy, a notice of intention not to renew the policy

beyond the agreed expiration date is made to the policyholder.

2. This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

SECTION 7. Renewal of insurance with altered rates.

1. Subject to subsection 2, if the insurer offers or purports to renew a policy at less favorable terms as to the dollar amount of coverage or deductibles or increases the rates in excess of fifteen percent, the new terms and new rates may take effect on the renewal date if the insurer has sent to the policyholder notice of the new terms and rates at least ten days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the ten-day period after receipt of the notice. Earned premium for the period of coverage, if any, must be calculated on a pro rata basis and the rates must be based on the previous policy term.
2. Subsection 1 does not apply if the change relates to guide "A" rates or excess rates also known as "consent to rate".

SECTION 8. Penalties.

1. A violation of any of the provisions of sections 1 through 7 of this Act must be deemed an unfair trade practice in the business of insurance and subject the violator to a penalty as determined by the commissioner not exceeding one thousand dollars for each and every act or violation. After three violations of any of the provisions of sections 1 through 7 of this Act within a twelve-month period, and after a hearing upon fifteen days' notice, the commissioner may revoke the license to transact business in this state of any insurance organization that committed such violations.
2. All notices required by this Act must be made by first-class mail addressed to the policyholder's last known address as stated in the policy. Notice by first-class mail is effective upon deposit in the United States mail. In addition to giving notice to the policyholder, the insurer shall also give notice to the agent of record, if any, in the manner specified for the policyholder.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 360

SENATE BILL NO. 2053
(Legislative Council)
(Interim Judicial Process Committee)

JUDGMENT EXEMPTIONS

AN ACT to amend and reenact sections 26.1-33-36 and 28-22-03.1 of the North Dakota Century Code, relating to the exemption of rights in life insurance policies and pensions from executions of judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-33-36 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-33-36. Rights in life policies exempt from claims of creditors. The surrender value of any life insurance policy which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support, is exempt absolutely from the claims of creditors of the insured to the extent provided in section 28-22-03.1. No creditor of the insured, and no court or officer of a court acting for any such creditors, may elect for the insured to have the life insurance policy surrendered or in anywise converted into money, and no life insurance policy or property right in the policy belonging to the holder, ~~and no~~ except for the value thereof in excess of the amount provided by section 28-22-03.1, may be subject to seizure under any process of any court under any circumstance.

* SECTION 2. AMENDMENT. Section 28-22-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.

* NOTE: Section 28-22-03.1 was repealed by section 2 of Senate Bill No. 2052, chapter 386.

2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Accrued dividend, interest, or cash value of an unexpired life insurance policy not to exceed four thousand dollars; Pensions; annuity policies or plans; life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay spousal support or child support. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.
4. The debtor's right to receive, or property that is traceable to:
 - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
 - c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
 - d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 361

HOUSE BILL NO. 1513
(Representatives Whalen, Wald)
(Senators Dotzenrod, Mutch)

SUICIDE UNDER INSURANCE POLICIES

AN ACT to amend and reenact section 26.1-33-37 of the North Dakota Century Code, relating to the determination of suicide as a defense to payment of a life insurance policy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-33-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-33-37. Suicide no - Determination - No defense to life policy after one year. The sanity or insanity of the person is not a factor in determining whether a person committed suicide within the terms of a life insurance policy regulating the payment of benefits in the event of the insured's suicide. In any suit on a life insurance policy, it is no defense after the policy has been in force one year that the insured committed suicide, and any provision or stipulation to the contrary in the policy is void.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 362

HOUSE BILL NO. 1329
(Representative Wentz)
(Senator J. Meyer)

ADOPTED CHILD INSURANCE

AN ACT to amend and reenact section 26.1-36-07 of the North Dakota Century Code, relating to required group health insurance coverage for adopted children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-07. Health insurance coverage ~~per~~ for newborn and adopted children - Scope of coverage - Notification of birth or adoption.

1. All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which provides coverage for a family member of the insured or subscriber must, as to the family members' coverage, also provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the insured or subscriber from the moment of birth and are also payable from the date of placement by a licensed child placement agency with respect to an adopted child.
2. The coverage for newly born children and for children placed for adoption by a licensed child placement agency consists of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.
3. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child or child placed for adoption by a licensed child placement agency and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth or date of placement by a licensed child placement agency of the child in order to have the coverage continue beyond the thirty-one-day period.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 363

HOUSE BILL NO. 1338
 (Representatives Mertens, J. DeMers)
 (Senators Waldera, Stenehjem)

SUBSTANCE ABUSE AND MENTAL CARE INSURANCE

AN ACT to amend and reenact sections 26.1-36-08 and 26.1-36-09 of the North Dakota Century Code, relating to group health policy and health service contract substance abuse and mental disorder coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-08. Group health policy and health service contract substance abuse coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, in by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01 or in, by a regional human resource service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness, or treatment services furnished by or under the supervision of a licensed physician or a licensed psychologist. For health services provided in

regional human service centers, reimbursement rates must be reasonably similar to the charges for care provided by hospitals as defined in this section.

2. The benefits ~~may~~ must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of ~~seventy~~ sixty days of services covered under this section and section 26.1-36-09 in any calendar year.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred ~~forty~~ twenty days of services covered under this section and section 26.1-36-09 in any calendar year.
 - c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization, provided however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.
 - d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section and section 26.1-36-09 in any calendar year. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits.
3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

"Partial hospitalization" means that level and intensity of continuous treatment that is greater than outpatient treatment, but less than inpatient treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period.

SECTION 2. AMENDMENT. Section 26.1-36-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-09. Group health policy and health service contract mental disorder coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis ~~where more than fifty persons are covered or are to be covered by the policy or contract and where the number of persons covered or to be covered represents more than seventy percent of all persons eligible for the coverage~~ unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorder and other related illness ~~in~~ by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health's rules pursuant thereto or as licensed under section 23-17.1-01, by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of mental disorder and other related illness, or treatment services furnished by or under the supervision of a licensed physician or a licensed psychologist.
2. The benefits ~~may~~ must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of ~~seventy~~ sixty days of services covered under this section and section 26.1-36-08 in any calendar year.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred ~~forty~~ twenty days of services covered under this section and section 26.1-36-08 in any calendar year.
 - c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization, provided however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.

d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section and section 26.1-36-08 in any calendar year. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits.

"Partial hospitalization" means that level and intensity of continuous treatment that is greater than outpatient treatment, but less than inpatient treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period.

3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

Approved April 4, 1987

Filed April 6, 1987

CHAPTER 364

HOUSE BILL NO. 1366
(Representatives J. DeMers, Kelly, Shaw)
(Senators Waldera, Holmberg)

FORMER SPOUSE UNDER GROUP INSURANCE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to group accident and health insurance conversion and continuation rights for spouses and children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

Former spouse's and dependent children's accident and health coverage to continue - Conditions.

1. No group accident and health insurance policy, including a policy issued under a self-insured plan, group health service contract issued under chapter 26.1-17, or evidence of coverage issued under chapter 26.1-18, providing coverage for hospital or medical expenses, delivered, issued for delivery, renewed, or amended after July 1, 1987, which in addition to covering the insured also provides coverage to the spouse of the insured may contain a provision for termination of coverage for a spouse covered under the policy, contract, or evidence of coverage solely as a result of a break in the marital relationship except by reason of an entry of a decree of annulment of marriage or divorce.
2. Every policy, contract, or evidence of coverage described in subsection 1 must contain a provision that permits continuation of coverage of the insured's former spouse and dependent children upon entry of a decree of annulment of marriage or divorce, if the decree requires the insured to provide continued coverage for those persons. The coverage may be continued until the date of remarriage of the insured's former spouse or the date coverage would otherwise terminate, whichever occurs first, but not to

exceed thirty-six months. The insured shall pay any required premium contributions for the coverage not to exceed one hundred two percent of the premium for the group coverage.

3. Every policy, contract, or evidence of coverage described in subsection 1 must contain a provision allowing a former spouse and dependent children, without providing evidence of insurability, to obtain from the insurer at the expiration of any continuation of coverage under subsection 2 or upon termination of coverage by reason of an entry of a decree of annulment or divorce which does not require the insured to provide continued coverage for the former spouse and dependent children, conversion coverage providing comparable benefits of the group policy, contract, or evidence of coverage, if an application is made to the insurer within thirty days following notice of the expiration of the continued coverage and upon payment of the appropriate premium. A policy, contract, or evidence of coverage providing reduced benefits at a reduced premium rate may be accepted by the former spouse and dependent children in lieu of the existing coverage. The policy, contract, or evidence of coverage must be renewable at the option of the former spouse as long as the former spouse is not covered under another accident and health insurance plan, policy, or contract, up to age sixty-five or to the day before the date of eligibility for coverage under title XVIII of the Social Security Act [42 U.S.C. 1305 et seq.], as amended.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 365

SENATE BILL NO. 2391
(Senators Mushik, Vosper)
(Representatives W. Williams, Whalen)

MEDICARE SUPPLEMENT POLICIES

AN ACT to create and enact a new subsection to section 26.1-36-32 of the North Dakota Century Code, relating to standards for medicare supplement policies; and to amend and reenact subsection 4 of section 26.1-36-31 and section 26.1-36-37 of the North Dakota Century Code, relating to the definition of medicare supplement policy and limitations on preexisting conditions in nursing home policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-36-31 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Medicare supplement policy" means a group or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include:
 - a. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.
 - b. A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

- (1) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
 - (2) Has been maintained in good faith for purposes other than obtaining insurance; and
 - (3) Has been in existence for at least two years prior to the date of its initial offering of the policy or plan to its members.
- c. Individual policies or contracts issued pursuant to a conversion privilege under an individual or group insurance policy or contract when the individual or group policy or contract includes provisions which are inconsistent with the requirements of sections 26.1-36-32 through 26.1-36-36.

SECTION 2. A new subsection to section 26.1-36-32 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A policy or certificate of insurance providing medicare supplement benefits which is sold to a consumer in addition to another medicare supplement policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

* SECTION 3. AMENDMENT. Section 26.1-36-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-37. Nursing home policy - Guaranteed renewable for life - Limitation on preexisting conditions. Any policy providing benefits for confinement to a nursing home must be guaranteed renewable for life. For the purposes of this section, "guaranteed renewable for life" means a ~~policy which~~ the insured has the right to continue the policy in force for life subject to ~~its~~ the policy's terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

A policy providing nursing home coverage may not contain any provision limiting payment of benefits due to preexisting conditions

* NOTE: Section 26.1-36-37 was also amended by section 11 of House Bill No. 1629, chapter 371.

of the insured after the policy has been in force for a period of six months. However, a policy or certificate of insurance providing benefits for confinement to a nursing home which is sold to a consumer in addition to another nursing home policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 366

HOUSE BILL NO. 1405
(Rydell, Gates)

HMO INSOLVENCY INSURANCE

AN ACT to amend and reenact section 26.1-38-01 of the North Dakota Century Code, relating to the insurance companies that must participate in the life and health insurance guaranty association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-38-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-38-01. Scope. This chapter applies to direct life insurance policies, accident and health insurance policies, health care or service contracts, annuity contracts, and contracts supplemental to life and accident and health insurance policies and annuity contracts issued by persons licensed to transact business in this state at any time. This chapter does not apply to:

1. That portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer.
2. That portion or part of any policy or contract under which the risk is borne by the policyholder.
3. Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.
4. Any policy or contract issued by a health maintenance organization which has insolvency coverage in force, a fraternal benefit society, a benevolent society, or the comprehensive health association.
5. Any policy or contract within the application of section 26.1-42-01.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 367

HOUSE BILL NO. 1622
(Tollefson)

PROPERTY AND CASUALTY COVERED LOSSES

AN ACT to amend and reenact section 26.1-39-05 of the North Dakota Century Code, relating to payment of proceeds of property and casualty insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 26.1-39-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-39-05. Face of ~~fire~~ policy to be paid in case of covered loss by fire or lightning.

1. Whenever any insurance policy is written or renewed to insure any real property in this state including structures owned by persons other than the insured, against loss caused by fire or lightning or resulting from any covered cause of loss and the insured property is wholly, completely, or partially destroyed by ~~fire~~ any covered cause of loss without fraud on the part of the insured or the insured's assigns, the amount of the insurance written in the policy is the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:
 - a. If the ~~fire covered~~ loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for ~~fire covered~~ loss incurred during the first ninety days shall be the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.

* NOTE: Section 26.1-39-05 was also amended by section 1 of House Bill No. 1310, chapter 368.

- b. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of ~~the fire or lightning~~ any covered cause of loss.
 - c. In case of double ~~fire~~ insurance, each insurer must contribute proportionally toward the loss without regard to the dates of the insurance policies.
2. This section does not apply as to personal property or any interest therein.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 368

HOUSE BILL NO. 1310
(Wald)

FIRE POLICY FACE AMOUNT PAYMENT

AN ACT to amend and reenact subsection 1 of section 26.1-39-05 of the North Dakota Century Code, relating to the payment of the face amount of a fire policy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 26.1-39-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Whenever any insurance policy is written or renewed to insure any real property in this state including structures owned by persons other than the insured, against loss by fire or lightning and the insured property is wholly, or completely, ~~or partially~~ destroyed by fire without fraud on the part of the insured or the insured's assigns, the amount of the insurance written in the policy is the true value of the property insured and the true amount of loss and measure of damages, subject to the following conditions:
 - a. If the fire loss occurred within ninety days after the policy was issued or within ninety days after the policy limits were increased by twenty-five percent or more at the insured's request, the loss payable to the insured for fire loss incurred during the first ninety days ~~shall be~~ is the full value of the policy, or the actual cash value or replacement cost of the property, whichever is less. This subsection does not apply to unchanged renewal policies or policies with inflation adjustment limits.
 - b. Builder risk policies of insurance covering property in the process of being constructed must be valued and settled according to the actual value of that portion of construction completed at the time of the fire or lightning loss.
 - c. In case of double fire insurance, each insurer ~~must~~ shall contribute proportionally toward the loss without regard to the dates of the insurance policies.

* NOTE: Section 26.1-39-05 was also amended by section 1 of House Bill No. 1622, chapter 367.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 369

HOUSE BILL NO. 1279
(Dorso, Shaft)

UNINSURED OR UNDERINSURED MOTOR VEHICLES

AN ACT to amend and reenact sections 26.1-40-13, 26.1-40-14, and 26.1-40-15 of the North Dakota Century Code, relating to uninsured motor vehicle insurance and underinsured motor vehicle insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-40-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-40-13. ~~"Uninsured motor vehicle" defined - includes insolvent insurer~~ Definitions applicable to sections 26.1-40-13 through 26.1-40-15. ~~For the purposes of~~ As used in sections 26.1-40-13 through 26.1-40-15, "uninsured and unless the context otherwise requires:

1. "Underinsured motor vehicle" means a motor vehicle for which there is a bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident, the applicable limit of bodily injury liability of which is:
 - a. Less than the applicable limit for underinsured motor vehicle coverage under the insured's policy; or
 - b. Has been reduced, by payments to persons other than the insured injured in the accident, to an amount less than the limit the insured has for underinsured motorist coverage under the insured's policy.
2. "Uninsured motor vehicle" means any motor vehicle not subject to insurance providing at least the bodily injury and death limits set forth in section 39-16.1-11 and includes an insured motor vehicle where the liability insurer is unable to make payment with respect to the

legal liability of its insured within the specified limits because of insolvency.

SECTION 2. AMENDMENT. Section 26.1-40-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-40-14. Uninsured and underinsured motorist coverage - Compulsory - Stacking not permitted.

1. No motor vehicle liability insurance policy against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of ownership, maintenance, or use of any motor vehicle may be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in amounts not less than ~~that~~ those set forth in section 39-16.1-11 for bodily injury or death for the protection of insureds who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, underinsured motor vehicles, and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.
2. Underinsured motorist coverage limits need not be provided in excess of fifty thousand dollars per person and one hundred thousand dollars per accident or, if consistent with the rating plan and rules, a combined single limit of one hundred thousand dollars per accident, or the insured's bodily injury liability limits, whichever is greater. Underinsured motorist coverage must pay compensatory damages for bodily injury, sickness, disease, or death when an insured is legally entitled to collect from the owner or operator of an underinsured motor vehicle.
3. The liability of the insurer providing underinsured motorist coverage cannot exceed the limits of the underinsured motorist coverage stated in the policy, and the maximum liability of the underinsured motorist coverage is the lesser of:
 - a. The difference between the amount paid in compensatory damages to the insured by and for any person or organization who may be legally liable for the bodily injury, sickness, disease, or death resulting therefrom, and the limit of underinsured motorist coverage; or
 - b. The amount of compensatory damages, established but not recovered by any agreement, settlement, or judgment with or for the person or organization

legally liable for the bodily injury, sickness, disease, or death resulting therefrom.

4. Any motor vehicle liability insurance policy which provides uninsured or underinsured motorist coverage, as specified in subsection 1, must provide that an insured or named insured is only protected to the extent of the coverage provided on the vehicle covered by the policy and involved in the accident. If no such vehicle is involved, coverage is only available to the extent of the applicable uninsured or underinsured motorist coverage provided on any of the insured or named insured's vehicles. In either instance, coverage on any other vehicle may not be added or stacked upon the applicable coverage.

SECTION 3. AMENDMENT. Section 26.1-40-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-40-15. Rights of insurer making payments under uninsured or underinsured motorist coverage. In the event of payment by an insurer to any person under the uninsured or underinsured motorist coverage, the insurer making the payments is, to the extent thereof, entitled to the proceeds of any settlement ~~of~~ or judgment resulting from the exercise of any rights of recovery of ~~such that~~ person against any person or organization legally responsible for the damage for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer. This section does not allow any insurer a claim for relief against or recovery from the unsatisfied judgment fund.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 370

SENATE BILL NO. 2413
(Mutch)

COORDINATION OF NO-FAULT BENEFITS

AN ACT to amend and reenact subsection 3 of section 26.1-41-13 of the North Dakota Century Code, relating to coordination of no-fault insurance benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-41-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of five thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 371

HOUSE BILL NO. 1629
(A. Williams, Myrdal, A. Olson)

LONG-TERM CARE INSURANCE

AN ACT to provide for regulation of long-term care insurance; and to amend and reenact section 26.1-36-37 of the North Dakota Century Code, relating to nursing home policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context requires otherwise:

1. "Applicant" means:

a. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits.

b. In the case of a group long-term care insurance policy, the proposed certificate holder.

2. "Certificate" means any certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

3. "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state to:

a. One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or both, or for members or former members or both, of the labor organizations.

b. Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

issued or delivered for the benefit of members of an association, as defined in subdivision c of subsection 3 of section 1 of this Act, if prior to advertising, marketing, or offering a policy within this state, the association, or the insurer of the association, files evidence with the commissioner of insurance that the association have at the outset a minimum of one hundred persons, has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one year, and has a constitution and bylaws that provide that:

1. The association hold regular meetings not less than annually to further the purposes of the members.
2. Except for credit unions, the association collect dues or solicit contributions from members.
3. The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing, the association is deemed to satisfy the organizational requirements, unless the commissioner makes a finding that the association does not satisfy the organizational requirements.

SECTION 3. Limits of group long-term care insurance. No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in subdivision d of subsection 3 of section 1 unless the commissioner of insurance or an insurance department in another state having statutory and regulatory long-term care insurance requirements substantially similar to those in this state has made a determination that the long-term care insurance requirements have been met.

SECTION 4. Disclosure and standards for long-term care insurance. The commissioner of insurance may adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

SECTION 5. Cancellation - Nonrenewal - Termination. No long-term care insurance policy may:

1. Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

2. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group certificate.

SECTION 6. Pre-existing conditions.

1. No long-term care insurance policy or certificate may define "preexisting condition" as more restrictive than meaning the existence of symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within:
 - a. Six months preceding the effective date of coverage of an insured who is sixty-five years of age or older on the effective date of coverage; or
 - b. Twenty-four months preceding the effective date of coverage of an insured who is under age sixty-five on the effective date of coverage.
2. No long-term care insurance policy may exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within:
 - a. Six months following the effective date of coverage of an insured who is sixty-five years of age or older on the effective date of coverage; or
 - b. Twenty-four months following the effective date of coverage of an insured who is under sixty-five on the effective date of coverage.
3. The commissioner may extend the limitation periods set forth in this section as to the specific age group categories or specific policy forms upon findings that the extension is in the best interest of the public.
4. The limitation on defining a preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

SECTION 7. Prior institutionalization. No long-term care insurance policy that only provides benefits following institutionalization may condition the benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

SECTION 8. Loss ratio standards. The commissioner may adopt or amend rules establishing loss ratio standards for long-term care insurance policies; provided, that a specific reference to long-term care insurance policies is contained in the rules.

SECTION 9. Right to return policy - Outline of coverage required - Contents of certificate.

1. a. Individual long-term care insurance policyholders may return the policy within ten days of its delivery and may have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies must have a notice prominently printed on the first page of the policy or attached to the first page stating that the policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.
- b. A person insured under a long-term care insurance policy or certificate issued pursuant to a direct response solicitation may return the policy within thirty days of its delivery and have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies or certificates issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to the first page stating in substance that the insured person may return the policy within thirty days of its delivery and may have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.
2. An outline of coverage must be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, or at the time the policy is delivered whichever comes first. The outline of coverage must include:
 - a. A description of the principal benefits and coverage provided in the policy.
 - b. A statement of the principal exclusions, reductions, and limitations contained in the policy.
 - c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums.

- d. A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.
3. A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state must include:
 - a. A description of the principal benefits and coverage provided in the policy.
 - b. A statement of the principal exclusions, reductions, and limitations contained in the policy.
 - c. A statement that the group master policy determines governing contractual provisions.

SECTION 10. Application. This Act does not supersede the obligations of entities subject to this Act to comply with the substance of other applicable insurance laws insofar as they do not conflict with this Act, except that laws and rules designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or solely as nursing home insurance need not meet the requirements of this Act.

* SECTION 11. AMENDMENT. Section 26.1-36-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-37. Nursing home policy - Guaranteed renewable for life --Limitation on preexisting conditions. Any long-term care insurance policy providing benefits for confinement to a nursing home must be guaranteed renewable for life. However, the commissioner may for good cause shown allow, on whatever terms and conditions the commissioner deems necessary, an insurer to nonrenew long-term care insurance policies on a statewide basis. For the purposes of this section, "guaranteed renewable" means a policy which the insured has the right to continue in force for life subject to its terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

A policy providing nursing home coverage may not contain any provision limiting payment of benefits due to preexisting conditions of the insured after the policy has been in force for a period of six months-

Approved April 4, 1987
Filed April 6, 1987

* NOTE: Section 26.1-36-37 was also amended by section 3 of Senate Bill No. 2391, chapter 365.

CHAPTER 372

HOUSE BILL NO. 1350
(Representative Stofferahn)
(Senators Waldera, Lips)

RISK RETENTION GROUPS

AN ACT to provide for the regulation of the formation and operation of risk retention groups and purchasing groups under the federal Product Liability Risk Retention Act of 1981; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context requires otherwise:

1. "Commissioner" means the North Dakota commissioner of insurance or the commissioner, director, or superintendent of insurance in any other state.
2. "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:
 - a. For a corporation, the state in which the purchasing group is incorporated.
 - b. For an unincorporated entity, the state of its principal place of business.
3. "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to do either of the following:
 - a. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims.
 - b. To pay other obligations in the normal course of business.
4. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other

arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

5. "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of either of the following:
 - a. Any business whether profit or nonprofit, trade, product, services including professional services, premises, or operations.
 - b. Any activity of any state or local government, or any agency or political subdivision thereof.

The term does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the federal Employer's Liability Act [45 U.S.C. 51 et seq.].

6. "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 5.
7. "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum all of the following:
 - a. The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
 - b. Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available.
 - c. Pro forma financial statements and projections.
 - d. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.
 - e. Identification of management, underwriting procedures, managerial oversight methods, investment policies.

- f. Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.
8. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.
9. "Purchasing group" means any group which meets all of the following:
- a. The group has as one of its purposes the purchase of liability insurance on a group basis.
 - b. The group purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subdivision c.
 - c. The group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.
 - d. The group is domiciled in any state.
10. "Risk retention group" means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands and which meets the qualifications for such groups as defined in the federal Product Liability Risk Retention Act of 1981 as amended.
11. "State" means any state of the United States or the District of Columbia.

SECTION 2. Risk retention groups chartered in this state. A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this Act, must comply with all of the laws, rules, regulations, and requirements applicable to such insurers chartered and licensed in this state and with section 3 of this Act to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, each risk retention group doing business in this state which has more than twenty-five resident members or

insureds shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. Immediately upon receipt of an application for charter in this state the risk retention group shall provide summary information concerning the filing to the national association of insurance commissioners including the name of the risk retention group, the identity of the initial members of the group, the identity of the individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Providing notification to the national association of insurance commissioners is in addition to, and is not sufficient to satisfy, the requirements of this Act.

SECTION 3. Risk retention groups not chartered in this state - Requirements for operation. Risk retention groups chartered in states other than this state, and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

1. Notice of operations and designation of commissioner as agent. Before offering insurance in this state, a risk retention group shall submit to the commissioner all of the following:
 - a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subsection 10 of section 1 of this Act.
 - b. For risk retention groups doing business in this state which have more than twenty-five resident members or insureds, a copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date.

- c. A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.
2. Financial condition. Any risk retention group doing business in this state shall submit to the commissioner upon the commissioner's request all of the following:
 - a. A copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist according to criteria established by the national association of insurance commissioners.
 - b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.
 - c. Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group.
 - d. Such information as may be required to verify its continuing qualifications as a risk retention group under subsection 10 of section 1 of this Act.
 3. Taxation.
 - a. All premiums paid for coverages within this state to risk retention groups are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that are applicable to foreign-admitted insurers.
 - b. To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.
 - c. To the extent the agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.
 - d. This subsection does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.

4. Compliance with prohibited practices act. Any risk retention group, its agents and representatives, shall comply with chapter 26.1-04.
5. Examination regarding financial condition. Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination, within sixty days after a request by the commissioner of this state. Any such examination must be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioner's examiner handbook.
6. Notice to purchasers. Any policy issued by a risk retention group must contain in ten point type of the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

7. Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are prohibited:
 - a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group.
 - b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.
8. Prohibition on ownership by an insurance company. No risk retention group may be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.
9. Delinquency proceedings. A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection 4 of this section.

SECTION 4. Compulsory associations. No risk retention group may join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor may any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

SECTION 5. Countersignatures not required. A policy of insurance issued to a risk retention group or any member of that group may not be required to be countersigned except as otherwise provided in section 26.1-11-07.

SECTION 6. Purchasing groups - Exemption from certain laws relating to the group purchase of insurance. Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 is exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters. A purchasing group is subject to all other applicable laws of this state.

SECTION 7. Notice and registration requirements of purchasing groups.

1. A purchasing group which intends to do business in this state shall furnish notice to the commissioner which shall do all of the following:
 - a. Identify the state in which the group is domiciled.
 - b. Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.
 - c. Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company.
 - d. Identify the principal place of business of the group.
 - e. Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subsection 9 of section 1 of this Act.
2. The purchasing group shall register with and designate the commissioner of insurance as its agent solely for the purpose of receiving service of legal documents or process, except that such requirements do not apply in the

case of a purchasing group to which all of the following apply:

- a. The group was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.
- b. Before October 27, 1986, the group purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, the group purchased its insurance from an insurance carrier licensed in any state.
- c. The group was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986.
- d. The group does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

SECTION 8. Restrictions on insurance purchased by purchasing groups.

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

SECTION 9. Administrative and procedural authority regarding risk retention groups and purchasing groups. The commissioner is authorized to make use of any of the powers and requirements established under title 26.1 so long as those powers or requirements are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirements that any injunction be issued by a court of competent jurisdiction.

SECTION 10. Penalties. A risk retention group which violates any provision of this Act is subject to fines and penalties applicable to licensed insurers generally, including revocation of its certificate of authority to do business in this state.

SECTION 11. Duty of agents or brokers to obtain license. Any person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state, shall,

before commencing any such activity, obtain a license from the commissioner. This section does not apply to any person acting as an agent or broker for a risk retention group doing business in this state which has fewer than twenty-six resident members or insureds.

SECTION 12. Binding effect of orders issued in United States district court. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state or in all states or in any territory or possession of the United States upon a finding that such a group is in a hazardous financial condition is enforceable in the courts of the state.

SECTION 13. Rules and regulations. The commissioner may adopt such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of the Act.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 373

HOUSE BILL NO. 1231
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

PREFERRED PROVIDER ORGANIZATIONS

AN ACT to provide for the regulation of the establishment and operation of preferred provider organizations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context indicates otherwise:

1. "Commissioner" means the insurance commissioner of the state of North Dakota.
2. "Covered person" means any person on whose behalf the health care insurer is obligated to pay for or provide health care services.
3. "Health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the services covered.
4. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18-01, and a fraternal benefit society as defined in section 26.1-15-01.
5. "Health care provider" means licensed providers of health care services in this state.
6. "Health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision, chiropractic, and pharmaceutical services or products.

7. "Preferred provider" means a duly licensed health care provider or group of providers who have contracted with the health care insurer, under this Act, to provide health care services to covered persons under a health benefit plan.
8. "Preferred provider agreement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this Act.

SECTION 2. Preferred provider arrangements. Notwithstanding any provision of law to the contrary, any health care insurer may enter into preferred provider arrangements.

1. Preferred provider arrangements must:
 - a. Establish the amount and manner of payment to the preferred provider. The amount and manner of payment may include capitation payments for preferred providers.
 - b. Include mechanisms which are designed to minimize the cost of the health benefit plan. These mechanisms may:
 - (1) Provide for the review and control of utilization of health care services.
 - (2) Establish a procedure for determining whether health care services rendered are medically necessary.
 - c. Include mechanisms which are designed to preserve the quality of health care.
2. Preferred provider arrangements may not unfairly deny health benefits to persons for covered medically necessary services.

SECTION 3. Health benefits plans.

1. Health care insurers may issue policies or subscriber agreements which provide for incentives for covered persons to use the health care services of preferred providers. These policies or subscriber agreements must contain all of the following provisions:
 - a. A provision that if a covered person receives emergency care and cannot reasonably reach a preferred provider that care will be reimbursed as though the covered person had been treated by a preferred provider.

- b. A provision that if covered services are not available through a preferred provider, reimbursement for those services will be made as though the covered person had been treated by a preferred provider.
 - c. A provision which clearly discloses differentials between benefit levels for health care services of preferred providers and benefit levels for health care services of other providers.
2. If the policy or subscriber agreement provides differences in benefit levels payable to preferred providers compared to other providers, the differences may not unfairly deny payment for covered services and may be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider.

SECTION 4. Preferred provider participation requirements. Health care insurers may place reasonable limits on the number of classes of preferred providers which satisfy the standards set forth by the health care insurer, provided that there be no discrimination against any providers on the basis of religion, race, color, national origin, age, sex, or marital status, and further provided that selection of preferred providers is made on the combined basis of least cost and highest quality of service.

SECTION 5. General requirements. Health care insurers complying with this Act are subject to all other applicable laws, rules, and regulations of this state.

SECTION 6. Rules. The commissioner may adopt rules necessary to enforce and administer this Act.

SECTION 7. Penalty. The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this Act. Any person who violates this Act is guilty of a class A misdemeanor.

Approved April 17, 1987
Filed April 20, 1987

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 374

HOUSE BILL NO. 1677
(Representatives Strinden, Kretschmar, Mertens)
(Senators Nething, Lashkowitz)
(Approved by the Committee on Delayed Bills)

COURT OF APPEALS

AN ACT to establish a temporary court of appeals; to amend and reenact subsection 5 of section 12.1-01-04, section 27-01-01, subsection 2 of section 27-23-01, and section 59-04-27 of the North Dakota Century Code, relating to references to the temporary court of appeals and judges of the temporary court of appeals; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Temporary court of appeals established - Jurisdiction - Writ authority - Administration. A temporary court of appeals is established to exercise appellate and original jurisdiction as delegated by the supreme court. Panels of the temporary court of appeals may issue original and remedial writs necessary to properly exercise jurisdiction in cases assigned to them. The panels of the temporary court of appeals are subject to administration by the supreme court pursuant to sections 3 and 8 of article VI of the Constitution of North Dakota.

SECTION 2. Number, assignment, and compensation of judges.

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred and fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be

assigned to hear cases that originated in the judicial district of the judge.

3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate, and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

SECTION 3. Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction.

1. Panels of the temporary court of appeals have jurisdiction to hear and to decide all cases assigned by the supreme court.
2. The supreme court may order reassignment of any case from a panel of the temporary court of appeals to the supreme court.
3. A majority of the three judges of a panel of the temporary court of appeals hearing a case is necessary to pronounce a decision.
4. When a judgment or order is reversed, modified, or confirmed by a panel of the temporary court of appeals, the reasons must be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with the record of the case. Any judge concurring or dissenting may give the reasons for the judge's concurrence or dissent in writing over the judge's signature.

SECTION 4. Administration - Employees and clerical assistance - Court of record - Place of sessions.

1. The clerk of the supreme court shall provide clerk services to panels of the temporary court of appeals.

2. Panels of the temporary court of appeals may hold court in any place the panel considers convenient and efficient for conducting its business.

3. All proceedings of the panels of the temporary court of appeals must be pursuant to the rules adopted by the supreme court.

SECTION 5. Chief judge. The chief justice of the supreme court shall designate a chief judge of each panel of the temporary court of appeals who shall preside pursuant to rules of the supreme court.

SECTION 6. Review of decisions of panels. Any party in interest who is aggrieved by a judgment or order of a panel of the temporary court of appeals may petition the supreme court for review of the judgment or order pursuant to rules of the supreme court. Upon the filing of a petition for review by the supreme court, the order or judgment and mandate of the panel of the temporary court of appeals is stayed pending action of the supreme court. The supreme court has discretion to grant or deny the petition.

SECTION 7. Right to appeal not created. Sections 1 through 9 of this Act do not provide or create a right of appeal where that right is not otherwise provided by law. An appeal assigned to a panel of the temporary court of appeals fulfills the right of appeal provided by section 28-27-02.

SECTION 8. Unitary appeal - Filing of appeal - Filing fee. All appeals must be treated as one appeal process under the jurisdiction of the supreme court. In any appeal there may be only one filing and one filing fee required. The filing fee is as prescribed by section 27-03-05.

SECTION 9. Publication of opinions. Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

SECTION 10. AMENDMENT. Subsection 5 of section 12.1-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Court" means any of the following courts: the supreme court, the temporary court of appeals, a district court, a county court, and where relevant, a municipal court.

SECTION 11. AMENDMENT. Section 27-01-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-01-01. Courts composing judicial system of state - Those constituting courts of record. The following are the courts of justice of this state:

1. The supreme court;
2. The temporary court of appeals;
3. The district courts;
- ~~3-~~ 4. The county courts; and
- 4- 5. Such other courts as are or may be created by law for cities.

Of these the supreme court ~~and~~, the temporary court of appeals, the district courts, and the county courts are courts of record.

SECTION 12. AMENDMENT. Subsection 2 of section 27-23-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Judge" means a justice of the supreme court, a judge of the temporary court of appeals, a judge of the district court, a judge of a county court, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.

SECTION 13. AMENDMENT. Section 59-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-27. Stay of proceedings. Upon the perfecting of an appeal in the manner prescribed in section 59-04-26, no further proceedings under the order or orders appealed from may be taken pending the appeal, unless the district court, county court, a panel of the temporary court of appeals, or supreme court may direct otherwise upon hearing, and upon such notice thereof as the court by order may prescribe. The court may prescribe the terms and conditions of a supersedeas bond, deposit, or other act in lieu thereof. Otherwise no bond shall be required, except the cost bond in the sum of two hundred fifty dollars, to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

SECTION 14. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$42,000 to the supreme court for the purpose of implementing panels of the temporary court of appeals for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, 1990, and after that date is ineffective.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 375

SENATE BILL NO. 2040
(Legislative Council)
(Interim Court Services Committee)

MUNICIPAL AND COUNTY COURTS

AN ACT to create and enact three new sections to chapter 40-18 of the North Dakota Century Code, relating to the clerk of municipal court and the transfer of cases from municipal court to county court; to amend and reenact sections 27-07.1-17, 29-07-01.1, 40-11-13, 40-18-01, 40-18-03, 40-18-06, 40-18-14, 40-18-15, 40-18-19, 40-18-20, 40-18-22, and 40-21-14 of the North Dakota Century Code, relating to jurisdiction of county courts, payment of expenses, fines for violations of municipal ordinances, qualifications of municipal judges, municipal court procedure, and notices to the supreme court; and to repeal section 40-08-21 of the North Dakota Century Code, relating to the authority of mayors to release imprisoned offenders from jail.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-17. Jurisdiction of county courts. A county court of any county of this state shall have jurisdiction in the following types of cases:

1. Civil cases with not more than ten thousand dollars in controversy. The jurisdiction of the county court extends to the following actions:
 - a. A garnishment action when the sum for which judgment is demanded in such action does not exceed ten thousand dollars.
 - b. An attachment action when the amount of damages claimed does not exceed ten thousand dollars.
 - c. An action for claim and delivery of property when the value of the property together with the sum, if any,

demanded as damages does not exceed ten thousand dollars.

- d. An action for eviction from real property irrespective of value when the amount demanded therein for rents and profits or damages does not exceed ten thousand dollars.
2. Criminal misdemeanor, infraction, and noncriminal traffic and game and fish cases.
 3. Criminal misdemeanor, infraction, and noncriminal traffic cases involving violations of city ordinances.
 4. Small claims cases.
 - 4- 5. Probate, guardianship, and other testamentary cases pursuant to title 30.1.
 - 5- 6. Trusts pursuant to title 30.1 and title 59.
 - 6- 7. Preliminary hearings and arraignments in felony criminal cases.
 - 7- 8. Commitment proceedings pursuant to chapter 25-03.1.
 - 8- 9. Any other cases as assigned by the presiding district judge of the judicial district in which the county is located; provided, however, that any party is entitled to have any matter assigned pursuant to this subsection heard by a district judge if a written request therefor is filed with the presiding district judge within three days after receiving notice of the assignment, and, provided further, that the trial of a criminal matter may not be assigned to a county judge who presided at the preliminary hearing except where a preliminary hearing has been waived.

* SECTION 2. AMENDMENT. Section 29-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-07-01.1. Payment of expenses for defense of indigents. Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 7 9 of section 27-07.1-17. A defendant with appointed counsel shall pay to the county or state such sums as the court shall direct. The state's attorney of the county wherein the action was prosecuted shall seek recovery of any such sums any time he the state's attorney determines the person for whom counsel

* NOTE: Section 29-07-01.1 was also amended by section 14 of House Bill No. 1050, chapter 73, by section 1 of Senate Bill No. 2105, chapter 39, and by section 1 of Senate Bill No. 2493, chapter 392.

was appointed may have funds to repay the county or state within six years of the date such amount was paid on ~~his~~ that person's behalf.

SECTION 3. AMENDMENT. Section 40-11-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-11-13. Fines and forfeitures for violation of ordinances paid into treasury. All fines, penalties, and forfeitures collected for offenses against the ordinances of a city, including those fines, penalties, and forfeitures collected as a result of a judgment of a ~~district court~~ or county court rendered pursuant to section 40-18-19, shall be paid into the city's treasury at such time and in such manner as may be prescribed by ordinance.

SECTION 4. AMENDMENT. Section 40-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-01. Jurisdiction and qualifications of municipal judge.

1. The municipal judge within a city having a population of three five thousand or more shall must be an attorney licensed to practice law in this state, unless no person so licensed is available in the city, and shall have exclusive jurisdiction of, and shall hear, try, and determine, all offenses against the ordinances of the city. The offices of county judge and municipal judge may not be held by the same person. In a city with a population of less than three five thousand, the municipal judge may be, but need not be, an attorney licensed to practice law in this state, nor shall he may the judge be required to be a resident of the city in which he is to serve. The offices of municipal judge and county judge may not be held by the same person, except pursuant to assignment of the presiding judge of the judicial district. The municipal judge has jurisdiction to hear, try, and determine offenses against the ordinances of the city.
2. In a city with a population of less than five thousand, the city may, by resolution or ordinance, require that municipal judges of the city be licensed to practice law in this state.
3. Notwithstanding any other provision of law, the municipal court or municipal judge has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the person charged with the offense has twice previously been convicted of violation of section 39-08-01 or equivalent ordinance within the five years preceding the commission of the offense charged or if the person charged with the offense has three times previously been convicted of violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the

offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of violation of section 39-08-01 or equivalent ordinance twice within the five years, or three times within the seven years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the person in the county court.

SECTION 5. AMENDMENT. Section 40-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-03. Vacancy in office of municipal judge - Temporary absence of municipal judge. If a vacancy exists in the office of municipal judge by death, resignation, or otherwise, it shall be filled by appointment by the executive officer, subject to confirmation by the governing body of the city. An appointee shall qualify, and he shall hold office until the next city election, and until his successor is elected and qualified. The governing body of a city may appoint an alternate municipal judge to serve when the municipal judge is unable to serve due to temporary absence, interest, disqualification, or disability. ~~Such~~ The alternate shall judge must be compensated ~~on a per diem basis~~ at a rate set by the governing body, and shall possess, as ~~nearly as is practicable,~~ the qualifications of ~~the regular~~ a municipal judge.

SECTION 6. AMENDMENT. Section 40-18-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-06. Salary of municipal judge - Payment of fees ~~into funds to~~ treasury. The municipal judge shall must be paid a salary by the ~~municipality~~ city and shall may not be paid in relation to fees or fines collected by the municipal court. The municipal judge's salary shall not be reduced during his term of office. ~~in all criminal actions and in all actions instituted under any ordinance of the city,~~ however, he shall collect the following fees-

- 1- For issuing summons or warrant of arrest and all proceedings prior to trial, two dollars-
- 2- For entry of default judgment or sentence upon plea of guilty or order binding over on waiver, two dollars-
- 3- For trial of issue of fact or preliminary hearing, four dollars-
- 4- For issuing execution and all proceedings subsequent to entry of judgment, one dollar-
- 5- For taking affidavit or acknowledgment other than in pending proceedings, twenty-five cents-

The fees shall be paid by him into the city treasury at the end of each month. At the end of each month, the municipal judge shall

make and file with the city auditor a written report under oath showing an account of all fees, fines, costs, forfeitures, and any other monetary consideration collected by him in such actions the court during the preceding month and showing the actions in which the fees were collected. ~~His~~ The municipal court shall pay the amount of fees, fines, costs, forfeitures, and any other monetary consideration collected to the city treasury at the end of each month. The judge's salary shall may not be paid to him until he the judge has complied with this section.

SECTION 7. A new section to chapter 40-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Municipal court clerk - Appointment - Salary - Authority. The governing body of a city may appoint any qualified person to serve as municipal court clerk for municipal ordinance violations. A municipal court clerk is entitled to receive a salary as fixed by the governing body and has that authority which may be assigned by a judge having jurisdiction over municipal ordinance cases of the city. The supreme court may adopt rules for the qualifications of municipal court clerks, the extent and assignment of authority by municipal court judges, and the conduct of the office, including rules for training sessions and for continuing education.

SECTION 8. A new section to chapter 40-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of municipal ordinance cases to county court. With the agreement of the governing body of the county, or the counties of the multicounty agreement area pursuant to section 27-07.1-02, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the county court of the county in which the city is located. These cases are deemed county court cases for purposes of appeal.

SECTION 9. AMENDMENT. Section 40-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-14. Municipal judge may enforce orders and judgments and punish for contempt. A municipal judge shall have has the power to enforce due obedience to his the court's orders and judgments. He The judge may fine or imprison for ~~civil~~ contempt ~~offered to him~~ committed in the judge's presence while holding court, ~~or to~~ as well as for contempt of process issued, ~~or~~ and of orders made by him the judge. When an act or omission constituting a contempt in a municipal court is not committed in the ~~immediate~~ view and presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. ~~Such~~ The person must be given a reasonable opportunity to employ counsel and ~~excuse~~ ~~or~~ defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge him the person or adjudge him the person guilty and may punish by fine or imprisonment or both. The fine in any case shall may not be more

than ~~one~~ five hundred dollars and the imprisonment ~~shall~~ may not be more than ~~one day~~ thirty days.

SECTION 10. AMENDMENT. Section 40-18-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-15. Trials in nonjury cases arising under the ordinance ordinances of a city. An action for the violation of a city ordinance shall for which the right to a jury trial does not otherwise exist or in which the defendant has timely and appropriately waived a right to a jury trial in writing pursuant to rules of the supreme court, may be tried and determined by the municipal judge, without the intervention of a jury. Nothing in this section shall deprive a defendant of the right to a trial by jury. In the event of an adverse verdict in a municipal court trial, a defendant may exercise his right of appeal as provided for in section 40-18-19 and a defendant shall have the right to a trial by jury upon appeal from the determination of a municipal judge, but a waiver of jury trial in the municipal court proceeding also constitutes a waiver of jury trial in the county court.

SECTION 11. A new section to chapter 40-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer to county court if jury trial not waived - Expenses of prosecution - Division of funds between city and county. If within fourteen days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the county court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county or any individual or entity for prosecution or defense services. If the city and the county do not otherwise agree by resolutions of the respective governing bodies, the city is entitled to sixty-five percent and the county is entitled to thirty-five percent of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section. The share of fees, fines, costs, forfeitures, and any other monetary consideration due to the city must be paid to the city treasury at least once each quarter, while the share due to the county must be paid to the county general fund at least once each quarter. At the time of payment, the county court shall account under oath to the city auditor for all money collected.

*** SECTION 12. AMENDMENT.** Section 40-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-19. Appeals from determinations of municipal judge. An appeal may be taken to the ~~district court~~ or the county court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North Dakota Rules of Criminal Procedure. An appeal ~~shall~~ be is perfected by notice of

* NOTE: Section 40-18-19 was also amended by section 4 of Senate Bill No. 2105, chapter 393.

appeal. No appeal, bail, or supersedeas bond may be required on an appeal from a determination in a municipal judge's court. An A perfected appeal to the district court or county court, when perfected, transfers the action to such county court for trial anew. That trial shall be conducted in accordance with procedures provided by rules promulgated by the supreme court. On all appeals from a determination in a municipal court, the appellate court shall take judicial notice of all of the ordinances of the city. No filing fee shall may be required in county court for the filing of an appeal from a judgment of conviction for the violation of a municipal ordinance.

SECTION 13. AMENDMENT. Section 40-18-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-20. Affidavit of prejudice. When the defendant in an action in a municipal court, or his attorney, or the municipality by the municipality's attorney or any other attorney acting for the municipality, before the trial commences, files an affidavit in writing stating that he has reason to believe and does believe that a fair and impartial trial of the action cannot be had before the judge about to try the same by reason of the bias or prejudice of such judge, the judge shall be disqualified. Demand for change of judge. Any party to a proceeding pending in any municipal court may obtain a change of judge pursuant to section 29-15-21, except that either a district judge, a county judge pursuant to section 40-18-01, or a municipal judge may be appointed to act in place of the disqualified judge. The alternate municipal judge, if any, is automatically appointed to preside in the case.

SECTION 14. AMENDMENT. Section 40-18-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-22. Continuing education of municipal judge and alternate judge required. Each municipal judge shall be required, and alternate judge shall at least twice within one year after his election taking office, and at least ~~once~~ twice each calendar year thereafter, to attend and participate in an educational session designated for that purpose by the supreme court, unless the judge is excused from such attendance by the supreme court. Such judge The city shall be reimbursed reimburse the judge for his necessary expenses of travel and subsistence as other city officials are so reimbursed.

If any such judge shall fail to attend such educational session within any calendar year fails to fulfill the requirements of this section, without being excused therefrom by the supreme court, the state court administrator shall report such fact the judge's failure to the commission on judicial conduct for such appropriate action as it deems appropriate.

SECTION 15. AMENDMENT. Section 40-21-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-21-14. City auditor to notify of election or appointments. The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of his that person's election or appointment. Within the same period of time, the city auditor shall also notify the state supreme court of the election or the appointment of any municipal judge or alternate judge.

SECTION 16. REPEAL. Section 40-08-21 of the North Dakota Century Code is hereby repealed.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 376

HOUSE BILL NO. 1469
(Representative Kelly)
(Senator Waldera)

SMALL CLAIMS COURT PROCESS

AN ACT to amend and reenact sections 27-08.1-02 and 27-08.1-03 of the North Dakota Century Code, relating to service of process in small claims court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court shall be commenced whenever any person executes and files with the court a claim affidavit, and serves causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to him by certified mail along with an order for appearance setting a hearing. The hearing shall be not less than ten days and not more than thirty days after the service or receipt of the order. The mailing, or personal service, may be made anywhere within the state.

SECTION 2. AMENDMENT. Section 27-08.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed two thousand dollars, which shall be delivered to served upon the plaintiff in person by a person of legal age not a party to or interested in the action, or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule

shall not apply to counterclaims in excess of two thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee as prescribed in subsection 2 of section 11-17-04 shall be charged for filing the claim affidavit.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 377

HOUSE BILL NO. 1402
(Anderson)

SMALL CLAIMS COURT REFEREES

AN ACT to amend and reenact section 27-08.1-08 of the North Dakota Century Code, relating to residency requirements for small claims court referees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-08. Referees; appointment of small claims court - Appointment - Term - Method of qualifying - Powers and duties - Compensation. The board of county commissioners may authorize a judge of a county court to appoint a referee of the small claims court who shall hold office at the pleasure of the judge. The referee shall qualify in the same manner as other civil officers, except that the referee need not be a qualified elector of the county, and ~~his~~ the duties and powers of the referee in the conduct of trials in the small claims court shall be governed by the provisions of rule 53(c), North Dakota Rules of Civil Procedure, insofar as ~~such~~ those provisions are not in conflict with the provisions of this chapter. The referee appointed ~~shall~~ must be a person versed in the law. The board of county commissioners shall determine the salary or fee of ~~said~~ the referee.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 378

HOUSE BILL NO. 1322
(Rydell, J. DeMers, Ulmer, Gates)

JUROR AND WITNESS EMPLOYMENT PROTECTION

AN ACT to amend and reenact section 27-09.1-17 of the North Dakota Century Code, relating to protection of employment of jurors and witnesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-09.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-09.1-17. Protection of jurors' and witnesses' employment.

1. An employer ~~shall~~ may not deprive an employee of ~~his~~ an employment, or threaten or otherwise coerce ~~him~~ an employee with respect thereto, because the employee receives a summons or subpoena, responds thereto, serves as a juror or witness, or attends court for ~~prospective~~ jury service or to give testimony pursuant to a subpoena.
2. Any employer who violates subsection 1 is guilty of a class B misdemeanor.
3. If an employer discharges an employee in violation of subsection 1, the employee within ninety days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable ~~shall~~ may not exceed lost wages for six weeks. If ~~he~~ the employee prevails, the employee ~~shall~~ must be allowed a reasonable attorney's fee fixed by the court.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 379

HOUSE BILL NO. 1307
(Representatives Shaft, Schneider)
(Senator Maxson)

BAR ASSOCIATION MEMBERSHIP

AN ACT to amend and reenact sections 27-12-02 and 27-12-03 of the North Dakota Century Code, relating to membership of the state bar association of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-12-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-12-02. Membership of state bar association. The membership of the state bar association of North Dakota shall consist of all persons who have paid their annual license fees to and have received their licenses from the secretary-treasurer of the state bar board, as provided by law, every person:

1. Who has secured an annual license to practice law in this state from the state bar board in accordance with section 27-11-22; or
2. Who has an unrevoked certificate of admission to the bar of this state and who has paid an annual membership fee to the state bar association. The annual fee must be established by the state bar association at its annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed eighty percent of the maximum fee for an annual license to practice law in this state as prescribed in section 27-11-22.

SECTION 2. AMENDMENT. Section 27-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-12-03. Rights of members of bar association. Members The members of the state bar association of North Dakota who have secured an annual license to practice law in this state shall be entitled to all of the rights and privileges of said the association and shall be entitled to vote and to participate in all of the meetings thereof. The members of the association who have not secured an annual license to practice law in this state are entitled to all of the rights and privileges of the association, except that they are not entitled to vote at the meetings or to serve as an officer of the association.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 380

SENATE BILL NO. 2404
(Senators Stenehjem, Mushik)
(Representatives Ulmer, Wentz, Schneider)

JUVENILE COURT TRAFFIC OFFENSES

AN ACT to amend and reenact subsection 9 of section 27-20-02 and section 27-20-31 of the North Dakota Century Code, relating to the jurisdiction of the juvenile court over traffic offenses committed by a child and the disposition of a delinquent child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 27-20-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and manslaughter resulting from the operation of a motor vehicle driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.

SECTION 2. AMENDMENT. Section 27-20-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-31. Disposition of delinquent child. If the child is found to be a delinquent child, or admits to a traffic-related offense in an informal adjustment hearing, the court may make any of the following orders of disposition best suited to his the child's treatment, rehabilitation, and welfare:

1. Any order authorized by section 27-20-30 for the disposition of a deprived child;

2. Placing the child on probation under the supervision of the juvenile supervisor, probation officer, or other appropriate officer of the court or of the court of another state as provided in section 27-20-41 or the director of the county ~~welfare~~ social service board under conditions and limitations the court prescribes;
3. Ordering the child to pay a fine if the delinquent act committed by the child constitutes manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a fine imposed pursuant to this subsection upon such terms and conditions as the court may determine. Fines collected pursuant to this subsection must be paid into the county treasury for disposition pursuant to section 29-27-02.1;
4. Placing the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority; or
- 4- 5. Committing the child to the state industrial school or to a state department to which commitment of delinquent or unruly children may be made.

Approved April 15, 1987
Filed April 17, 1987

CHAPTER 381

SENATE BILL NO. 2443
(Senators Stenehjem, Mushik)
(Representatives Ulmer, Wentz)

UNRULY CHILD

AN ACT to amend and reenact subsection 10 of section 27-20-02 of the North Dakota Century Code, relating to the definition of an unruly child under the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 27-20-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of himself or others;
- c. Has committed an offense applicable only to a child;
~~or~~
- d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; ~~and~~ or
- e. Has committed an offense in violation of section 39-08-18; and
- f. In any of the foregoing instances is in need of treatment or rehabilitation.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 382

HOUSE BILL NO. 1606
(O'Connell, Skjerven, Wilkie, Laughlin, D. Olsen)

UNRULY CHILD DETENTION

AN ACT to amend and reenact section 27-20-16 of the North Dakota Century Code, relating to the detention of delinquent, unruly, and deprived children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-16 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-16. Place of detention.

1. A child alleged to be delinquent or unruly may be detained only in:
 - a. A licensed foster home or a home approved by the court;
 - b. A facility operated by a licensed child welfare agency;
 - c. A detention home or center for delinquent or unruly children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court;
 - d. Any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated by the court; or
 - e. A jail or other facility for the detention of adults only if the facility in subdivision c is not available, the detention is in a room separate and removed from those for adults, it appears to the satisfaction of the court or the juvenile supervisor, intake officer, or other authorized officer of the

court, that public safety and protection reasonably require detention, and it is so authorized.

2. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be a child is received at the facility and shall bring ~~him~~ the person before the court upon request or deliver ~~him~~ the person to a detention or shelter care facility designated by the court.
3. If a case is transferred to another court for criminal prosecution the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.
4. A child alleged to be deprived may be placed in shelter care only in the facilities stated in subdivisions a, b, and d of subsection 1 and ~~shall~~ may not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent or unruly.
5. Effective ~~July~~ January 1, ~~1987~~ 1988, a child alleged to be unruly may be detained only in the facilities listed in subdivisions a, b, c, and d of subsection 1.

Approved April 4, 1987
Filed April 6, 1987

JUDICIAL PROCEDURE, CIVIL

CHAPTER 383

SENATE BILL NO. 2055
(Legislative Council)
(Interim Judiciary Committee)

ACTION AGAINST STATE LIMITATIONS

AN ACT to amend and reenact section 28-01-22.1 of the North Dakota Century Code, relating to the statute of limitations for actions against the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-22.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-22.1. **Actions against state - Limitation.** When not otherwise specifically provided by law, an action against the state or its employees and officials acting within the scope of their employment or office must be commenced within ~~six~~ three years after the claim for relief has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence. This may not be construed as a waiver of immunity.

SECTION 2. EFFECTIVE DATE. This Act applies to claims accruing after June 30, 1987.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 384

HOUSE BILL NO. 1082
(Dorso)

NONMANUFACTURER LIABILITY LIMITATION

AN ACT to create and enact a new section to chapter 28-01.1 of the North Dakota Century Code, relating to the liability of a nonmanufacturer; and to amend and reenact section 28-01.1-06 of the North Dakota Century Code, relating to the definition of a manufacturer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitation on liability of nonmanufacturer.

1. In any product liability action based in whole or in part on strict liability in tort commenced or maintained against a defendant other than the manufacturer, the defendant shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.
2. After the plaintiff has filed a complaint against a manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying defendant, unless the plaintiff can show any of the following:
 - a. That the certifying defendant exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.

- b. That the certifying defendant had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.
 - c. That the certifying defendant created the defect in the product which caused the personal injury, death, or damage to property.
3. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying defendant, if the plaintiff can show any of the following:
 - a. That the applicable statute of limitation bars the assertion of a strict liability in tort cause of action against the manufacturer of the product allegedly causing the injury, death, or damage.
 - b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.
 - c. That the manufacturer no longer exists, is not subject to the jurisdiction of the courts of this state, or, despite due diligence, is not amenable to service of process.
 - d. That the manufacturer is unable to satisfy any judgment, reasonable settlement, or other agreement with the plaintiff.
4. If the identity of the manufacturer was incorrect and the plaintiff has moved to vacate the order of dismissal and reinstate the certifying defendant, the court shall deny the motion if the correct identity of the manufacturer is given by the certifying defendant.

SECTION 2. AMENDMENT. Section 28-01.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01.1-06. Definitions applicable to sections 28-01.1-06, 1 of this Act, and 28-01.1-07. For purposes of this section, section 1 of this Act, and section 28-01.1-07:

1. "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or consumer. The term includes any seller who has actual knowledge of a defect in a product or a seller of a product who creates and furnishes a manufacturer with specifications, relevant to the alleged defect, for producing the product or who otherwise exercises some significant control over all or a portion of the manufacturing process or who alters or

modifies a product in any significant manner after the product comes into his possession and before it is sold to the ultimate user or consumer. The term also includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer. A seller not otherwise a manufacturer shall not be deemed to be a manufacturer merely because he places or has placed a private label on a product if he-

a- Does not otherwise specify how the product shall be produced; or

b- Does not control, in some significant manner, the manufacturing process of the product;

and the seller discloses the actual manufacturer.

2. "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.
3. "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 385

SENATE BILL NO. 2302
(Olson)

EXECUTION, JUDGMENTS, AND RECORDS

AN ACT to amend and reenact subsection 6 of section 11-17-01, sections 28-20-11, 28-21-05, 28-21-06, 29-26-22, 29-26-22.1, and 29-27-02 of the North Dakota Century Code, relating to clerk of court recordkeeping requirements, issuance and contents of an execution to enforce a judgment, assessing costs of prosecution, and docketing and enforcement of a judgment for a fine or costs in a criminal case.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 11-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Keep in the office a register of all actions, in which the clerk shall enter the title of each action with brief notes of all papers filed and proceedings had in the action together with the date of the filing or proceeding, and such other matters as are required by supreme court rule.

SECTION 2. AMENDMENT. Section 28-20-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-20-11. How judgment entered - Notice when certified copy recorded entered. The judgment shall be entered in the judgment book and shall must specify clearly the relief granted or other determination of the action; but the. An entry of the judgment must be made by the clerk in the register of civil actions. The entry of any judgment affecting the title or possession of real property, except judgments required to be docketed under the provisions of section 28-20-13, shall not be notice of its contents or constructive notice of such judgment to a subsequent bona fide purchaser or encumbrancer, nor to a privy of any party to such judgment who is otherwise a subsequent purchaser or encumbrancer in good faith, and for a valuable consideration, until a certified copy

of such judgment shall be recorded in the office of the register of deeds in the county in which such property is located.

SECTION 3. AMENDMENT. Section 28-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-05. Execution against property issued to sheriff of counties where judgment docketed. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property, it must ~~may~~ be issued to the sheriff of the any county where the property or some part thereof is situated. ~~Executions~~ An execution must be issued from the court of the county which entered the judgment, though more than one execution may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies by the sheriff of such that county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. If the sheriff of the county to which the execution may be issued was a party in the action which resulted in the judgment or has an interest in any of the property against which the execution may be applied, the execution may be issued to the coroner of that county, and the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in this chapter.

SECTION 4. AMENDMENT. Section 28-21-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-21-06. Issue Issuance and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court and subscribed by the clerk of that court, and directed and delivered to ~~the~~ a sheriff, ~~or to the coroner when the sheriff is a party or interested as provided in section 28-21-05.~~ It must refer intelligibly to the judgment, stating the ~~court, the county where the judgment roll or transcript is filed date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, and the names of the parties.~~ If the execution is against the property of a judgment debtor, the execution must also state the amount of money the judgment, if it is for money, and the amount actually due thereon with interest computed by the clerk issuing the execution ordered the debtor to pay to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest to be used in calculating interest due on the judgment pursuant to section 28-20-34, the amount of the costs accruing on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a county other than that of the county of the issuing writ, the date and time of ~~docketing~~ the judgment was docketed in the county of the sheriff to which whom the execution is being issued, and shall require the officer substantially as

follows. If the execution is for the delivery of the possession of real or personal property, the execution must also particularly describe the property to be delivered, specify the value of the property, identify the party entitled to possession of the property, and, if the same judgment orders the party against whom the judgment was rendered to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts of the costs, damages, or rents or profits payable as of the date of issuance of the execution. Upon receipt of an execution the sheriff shall:

1. If ~~it~~ the execution is against the property of the judgment debtor, ~~to~~ satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of ~~such~~ the debtor, and, if sufficient personal property cannot be found, out of the real property belonging to ~~him~~ the debtor on the day when the judgment was docketed in the county or at any time thereafter;. If real or personal property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or
2. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, or tenants of real property or trustees, ~~to~~ satisfy the judgment out of such property, and
- 3- If ~~it~~ the execution is for the delivery of the possession of real or personal property, ~~to~~ deliver the possession of the same, particularly describing ~~it~~, property to the party entitled thereto, and at the same time may require the officer ~~to~~ satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered; and the value of the property for which the judgment was recovered, ~~to~~ be specified therein; if a delivery thereof cannot be had; and, if sufficient personal property cannot be found, ~~then~~ out of the real property belonging to ~~him~~ the party on the day when the judgment was docketed in the county or at any time thereafter; and in that respect shall be deemed an execution against property. If delivery of the property cannot be had, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the party as if an execution against the property of the party had been issued.

* SECTION 5. AMENDMENT. Section 29-26-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22. Judgment for fines and costs - Statement to be filed by court - Docketing and enforcement. In all cases of conviction, the

* NOTE: Section 29-26-22 was also amended by section 1 of Senate Bill No. 2458, chapter 394.

costs of the prosecution may be taxed against the defendant. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. Costs shall not include any apportionment of salaries of judicial or law enforcement officers, nor shall any apportionment of maintenance costs, utility expenses, or amortization of capital expenditures be included in any assessment of costs. A judgment that the defendant pay a fine and costs, or either, must be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fees in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

SECTION 6. AMENDMENT. Section 29-26-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22.1. Status of judgment ~~Judgment for fines and fine or costs in criminal cases - Docketing and enforcement.~~ Judgments for fines and costs in criminal cases shall have the same status as judgments for money in civil cases and be subject to the same statutes of limitations, shall impose the same lien upon real property, when certified and filed in the district court as provided in civil cases and executions thereon shall issue in the same manner. The court may, within ten years of the date of entry of a judgment that imposes a fine or assesses costs against a defendant, order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. The docketed judgment may be docketed in any other county in the same manner, it imposes a lien upon the real property owned by the defendant to the same extent, it is subject to the same statute of limitations, and it is enforceable by execution in the same manner as provided for a civil judgment for money.

SECTION 7. AMENDMENT. Section 29-27-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-27-02. Judgment for fine and or costs. If the judgment mentioned in section 29-27-01 ~~is for~~ imposes a fine and or assesses costs, ~~or either alone,~~ and the judgment has been docketed in the judgment docket by order of the court, the judgment is enforceable by execution ~~may issue thereon~~ in the same manner as ~~en~~ provided for a judgment for money in a civil action.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 386

SENATE BILL NO. 2052
(Legislative Council)
(Interim Judicial Process Committee)

BENEFITS EXEMPT FROM PROCESS

AN ACT to exempt public retirement benefits, assistance for dependent children, and crime victims reparations awards from all liabilities for debts of the person; and to repeal sections 15-39.1-13, 18-05-11, subsection 3 of section 28-22-03.1, sections 39-03.1-23, 40-45-23, 40-46-22, 50-09-15, 54-52-12, and subsection 4 of section 65-13-15 of the North Dakota Century Code, relating to the exemption of refunds and annuities paid by the teachers' fund for retirement, payments by a firemen's relief association, unmaturred life insurance policy values, retirement, disability, or severance allowance from the highway patrolmen's retirement fund, pensions from a policemen's pension fund or city employees' pension fund, payments of aid to dependent children, benefits paid by the state retirement board, and awards of reparation for crime victims from execution of judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 65-13 as reparations for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

* SECTION 2. REPEAL. Sections 15-39.1-13, 18-05-11, 39-03.1-23, 40-45-23, 40-46-22, 50-09-15, 54-52-12, and subsection 4 of section 65-13-15 of the North Dakota Century Code and subsection 3 of section 28-22-03.1 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 26, 1987
Filed March 30, 1987

* NOTE: Section 28-22-03.1 was also amended by section 2 of Senate Bill No. 2053, chapter 360.

Section 54-52-12 was also amended by section 1 of House Bill No. 1146, chapter 654.

CHAPTER 387

HOUSE BILL NO. 1084
(Cleveland)

FRIVOLOUS CIVIL ACTIONS

AN ACT to amend and reenact subsection 2 of section 28-26-01 of the North Dakota Century Code, relating to the mandatory awarding of costs in frivolous civil actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-26-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In civil actions the court ~~may, in its discretion shall,~~ upon a finding that a claim for relief was frivolous, award reasonable actual ~~or~~ and statutory costs, ~~or both,~~ including reasonable attorney's fees to the prevailing party. Such costs ~~may~~ must be awarded regardless of the good faith of the attorney or ~~client~~ party making the claim for relief if there is such a complete absence of actual facts or law that a reasonable person could not have thought a court would render judgment in their favor, providing the prevailing party has in responsive pleading alleged the frivolous nature of the claim. This subsection does not require the award of costs or fees against an attorney or party advancing a claim unwarranted under existing law, if it is supported by a good faith argument for an extension, modification, or reversal of the existing law.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 388

HOUSE BILL NO. 1029
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE AGENCIES

AN ACT to amend and reenact subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the agencies defined as administrative agencies under the Administrative Agencies Practice Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 28-32-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of ~~disaster~~ emergency ~~services~~ management.
 - c. The council on the arts.
 - d. The state auditor.

- e. The economic development commission.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational broadcasting council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, and the North Dakota mill and elevator association.
- m. The director of institutions.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.
- r. The state board of public school education while administering the state school construction fund.
- s. ~~The department of human services with respect to its rules under the family subsidy program.~~
- ~~t.~~ The state fair association.
- ~~w-~~ t. The state toxicologist.
- ~~w-~~ u. The board of university and school lands except with respect to activities under chapter 47-30.1.
- ~~w-~~ v. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- ~~x-~~ ~~The wheat commission.~~

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 389

SENATE BILL NO. 2416
(Senators Mushik, Nalewaja, Redlin)
(Representatives Haugland, J. DeMers)

ADMINISTRATIVE RULE ADOPTION DEADLINE

AN ACT to amend and reenact section 28-32-02 of the North Dakota Century Code, relating to adoption of administrative rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-02. Rulemaking power of agency - Adoption deadlines - Notice - Attorney general's opinion. Every administrative agency is authorized to adopt, and from time to time to amend or repeal, reasonable rules in conformity with the provisions of any statute administered or enforced by the agency, and to prescribe methods and procedure required in connection therewith. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own. Prior to the adoption, amendment, or repeal of any rule, the agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested. The agency shall consider fully all written and oral submissions respecting the proposed rule. Every rule proposed by any administrative agency shall must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule merely repeats or paraphrases the text of the statute purported to be implemented by the rule. The attorney general may not approve any rule as to legality where the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable. The attorney general may suggest any revision or rewording of a rule to meet objections as to legality.

Approved March 12, 1987

Filed March 16, 1987

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 390

SENATE BILL NO. 2527
(Maxson)

SEX OFFENSE LIMITATION PERIODS

AN ACT to amend and reenact sections 29-04-02, 29-04-03, and 29-04-03.1 of the North Dakota Century Code, relating to prosecution of certain sexual offenses if the victim is under eighteen years of age.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-04-02. Prosecution for felony other than murder within three years. ~~An information Except as otherwise provided by law, a prosecution for any felony other than murder must be filed, or an indictment must be found, commenced within three years after its commission. Nothing in this section contained shall be construed to bar or prevent prevents a person prosecuted for murder from being found guilty of manslaughter any included offense and punished accordingly.~~

SECTION 2. AMENDMENT. Section 29-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-04-03. Prosecution for misdemeanor or infraction within two years. ~~An information, or a complaint, for A prosecution of a misdemeanor or infraction, except as otherwise specifically limited provided by law, must be filed, or an indictment found, commenced within two years after its commission.~~

SECTION 3. AMENDMENT. Section 29-04-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-04-03.1. Prosecution for ~~child sexual abuse of minors to be commenced within seven years. An information, indictment, or complaint A prosecution for violation of sections 12.1-20-03 through 12.1-20-08, and or of section 12.1-20-11, where the victim and the~~

actor were in a familial relationship was under eighteen years of age at the time the offense was committed, shall be found, made, or filed must be commenced in the proper court within seven years after the commission of the offense.

"Familial relationship", for purposes of this section, means a situation in which the actor is any of the following:

- 1- The complainant's parent, stepparent, or guardian.
- 2- Nearer of kin to the complainant than first cousin, computed by rules of the civil law, whether of the half or the whole blood.
- 3- The brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great grandparent, great uncle, or great aunt of the complainant, by marriage or adoption.
- 4- An adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Approved April 7, 1987

Filed April 9, 1987

CHAPTER 391

SENATE BILL NO. 2231
(Committee on Judiciary)
(At the request of the Attorney General)

CHILD VICTIM SEX OFFENSE LIMITATIONS

AN ACT to create and enact a new section to chapter 29-04 of the North Dakota Century Code, relating to the tolling of the statute of limitations as to a child victim.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 29-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Statute of limitations as to child victim. If the victim of a violation of chapter 12.1-20 is under the age of fifteen, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of fifteen.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 392

SENATE BILL NO. 2493
(Senator Olson)
(Representative Rydell)

INDIGENT DEFENSE COSTS

AN ACT to amend and reenact section 29-07-01.1 of the North Dakota Century Code, relating to recoupment of expenses for defense of indigent defendants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 29-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-07-01.1. Payment of expenses for defense of indigents. Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 7 of section 27-07.1-17. A defendant with appointed counsel shall ~~pay to reimburse~~ the county or state such sums as the ~~court shall direct~~ county or state expends on the defendant's behalf, unless otherwise ordered by the court. The state's attorney of the county wherein the action was prosecuted shall seek civil recovery of any such sums any time he the state's attorney determines the person for whom counsel was appointed may have funds to repay the county or state within six years of the date such amount was paid on his the person's behalf. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 29-07-01.1 was also amended by section 14 of House Bill No. 1050, chapter 73, by section 2 of Senate Bill No. 2040, chapter 375, and by section 1 of Senate Bill No. 2105, chapter 393.

CHAPTER 393

SENATE BILL NO. 2105
(Committee on Judiciary)
(At the request of the Supreme Court)

INDIGENT DEFENSE EXPENSES

AN ACT to amend and reenact sections 29-07-01.1, 31-01-18, 31-01-19, and 40-18-19 of the North Dakota Century Code, relating to the payment of indigent defense expenditures and witness fees and expenses in criminal cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 29-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-07-01.1. Payment of expenses for defense of indigents. Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court, and by the city wherein the alleged offense took place if the action is prosecuted in municipal court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 7 6 of section 27-07.1-17. The city shall also pay the expenses in any appeal taken to district court or county court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant with appointed counsel shall pay to the county or, state, or city such sums as the court shall direct. The state's attorney of the county or prosecuting attorney of the city wherein the action was prosecuted alleged offense took place shall seek recovery of any such sums any time he the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the county or, state, or city within six years of the date such amount was paid on his the defendant's behalf.

SECTION 2. AMENDMENT. Section 31-01-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 29-07-01.1 was also amended by section 14 of House Bill No. 1050, chapter 73, by section 2 of Senate Bill No. 2040, chapter 375, and by section 1 of Senate Bill No. 2493, chapter 392.

31-01-18. Expenses of witness paid by city, county, or state upon court order in criminal or municipal court action. When a person, as a witness in a criminal or municipal court action, attends appears before a magistrate, grand jury, or court, upon a subpoena or in pursuance of an undertaking and it appears that he:

1. Has come from a place outside the county; or
2. Is poor and unable to pay the expenses of such attendance,

the court, if the attendance of the witness is upon a trial, by order upon its minutes, or in any other case, the judge, by a written order, may direct the state in district court cases, the county treasurer in county court cases, or the city in municipal court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of his the witness's attendance. Upon the production of the order or a certified copy thereof, the state, county treasurer, or city, to whichever entity the order is directed, must pay the witness the sum specified therein out of the county treasury. Where the order is issued by the district court the witness shall be paid by the state.

SECTION 3. AMENDMENT. Section 31-01-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-19. Witness for indigent defendants subpoenaed and paid by city, county, or state under court order in criminal or municipal court action. If it appears to the court before which a criminal action or municipal ordinance violation is about to be tried that the defendant is unable to pay the witnesses in his to appear on the defendant's behalf, such court shall make an order, to be entered in the minutes, that such witnesses as may be deemed reasonable, naming them, be subpoenaed to attend at such trial at the expense of the city, the county, or the state, whichever is liable to pay the costs of the prosecution of such action, and such witnesses shall be paid accordingly.

* SECTION 4. AMENDMENT. Section 40-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-19. Appeals from determinations of municipal judge. An appeal may be taken to the district court or the county court from a judgment of conviction in a municipal court in accordance with the North Dakota Rules of Criminal Procedure. An appeal shall be perfected by notice of appeal. No appeal, bail, or supersedeas bond may be required on an appeal from a determination in a municipal judge's court. An appeal to the district court or county court, when perfected, transfers the action to such court for trial anew. That trial shall be conducted in accordance with procedures provided by rules promulgated by the supreme court. On all appeals from a determination in a municipal court, the appellate court shall take judicial notice of all of the ordinances of the city. No filing fee shall be required for the filing of an appeal from a judgment of

* NOTE: Section 40-18-19 was also amended by section 12 of Senate Bill No. 2040, chapter 375.

conviction for the violation of a municipal ordinance. Expenses necessary for the adequate defense of a needy person in an appeal to district or county court from a judgment of conviction for the violation of a municipal ordinance, as approved by the presiding district or county judge, must be paid by the city wherein the alleged offense took place.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 394

SENATE BILL NO. 2458
(Senators Stenehjem, Maxson, Peterson)
(Representatives Cleveland, Laughlin)

COURT COSTS

AN ACT to amend and reenact section 29-26-22 of the North Dakota Century Code, relating to court costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 29-26-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22. Judgment for fines and, costs, and court administration fee - Statement to be filed by court - Docketing and enforcement. In all cases of conviction, the costs of the prosecution a court administration fee of up to twenty-five percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. Costs shall not include any apportionment of salaries of judicial or law enforcement officers, nor shall any apportionment of maintenance costs, utility expenses, or amortization of capital expenditures be included in any assessment of costs. When a fine is imposed and suspended or the imposition of a sentence is suspended pursuant to chapter 12-53, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota. A judgment that the defendant pay a fine and, costs, or court administration fee, or either any combination thereof, must be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action.

Approved April 1, 1987
Filed April 2, 1987

* NOTE: Section 29-26-22 was also amended by section 5 of Senate Bill No. 2302, chapter 385.

CHAPTER 395

SENATE BILL NO. 2230
(Committee on Judiciary)
(At the request of the Attorney General)

EXTRADITION INQUIRIES AND EXPENSES

AN ACT to create and enact two new sections to chapter 29-30.3 of the North Dakota Century Code, relating to inquiry into the guilt or innocence of an accused upon extradition and to the payment of expenses of an extradition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 29-30.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Guilt or innocence of accused - When inquiry made. The guilt or innocence of the accused as to the crime with which the person is charged may not be inquired into by the governor or in any proceeding after a demand for extradition has been presented to the governor or a demand for rendition has been filed with the attorney general, except as it may be involved in identifying the person held as the person charged with the crime.

SECTION 2. A new section to chapter 29-30.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Payment of expenses. When the charged offense is a felony, the expenses of returning the demanded person to this state must be paid out of the state treasury, on the certificate of the governor and warrant of the county auditor; and in all other cases they must be paid out of the county treasury in the county in which the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state under sections 44-08-04 and 54-06-09.

Approved April 14, 1987
Filed April 15, 1987

UNIFORM PROBATE CODE

CHAPTER 396

HOUSE BILL NO. 1626
(Laughlin)

INFORMAL PROBATE PROCEEDINGS

AN ACT to amend and reenact sections 30.1-14-01.1 and 30.1-14-05 and subsection 1 of section 30.1-14-07 of the North Dakota Century Code, relating to informal probate proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-14-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-14-01.1. Duty of court to provide forms to an applicant - Assistance of attorney not required. The court shall provide the necessary forms to an applicant who requests aid in using the informal probate or appointment procedure. The forms and explanatory materials shall be prepared by the state court administrator and provided at cost. The assistance of an attorney is not required for informal probate or appointment procedure.

SECTION 2. AMENDMENT. Section 30.1-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-14-05 (3-305). Informal probate - Court not satisfied. If the court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 30.1-14-03 and 30.1-14-04, or for any other reason specified by law, it may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

SECTION 3. AMENDMENT. Subsection 1 of section 30.1-14-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 30.1-17-14, if at

least one hundred twenty hours have elapsed since the decedent's death, the court, after making the findings required by section 30.1-14-08, shall appoint the applicant subject to qualification and acceptance; ~~provided, that if.~~ If the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that ~~his~~ the estate be subject to the laws of this state. The court must make its order of appointment and issue letters testamentary or letters of administration within ten working days after all requirements for informal proceedings have been met.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 397

HOUSE BILL NO. 1408
(C. Nelson)

ESTATE PROPERTY COLLECTION BY AFFIDAVIT

AN ACT to amend and reenact section 30.1-23-01 of the North Dakota Century Code, relating to collection of personal property of decedent by affidavit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-23-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-23-01. (3-1201) Collection of personal property by affidavit.

1. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:
 - a. The value of the entire estate subject to distribution or succession under chapters 30.1-01 through 30.1-23, wherever located, less liens and encumbrances, does not exceed fifteen thousand dollars.
 - b. Thirty days have elapsed since the death of the decedent.
 - c. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.
 - d. The claiming successor is entitled to payment or delivery of the property.
2. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection 1.

Approved April 1, 1987
Filed April 2, 1987

JUDICIAL PROOF

CHAPTER 398

HOUSE BILL NO. 1220
(Committee on Judiciary)
(At the request of the Attorney General)

SELF-INCRIMINATION IMMUNITY

AN ACT to amend and reenact section 31-01-09 of the North Dakota Century Code, relating to the privilege against self-incrimination and grant of immunity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-09. Privilege against self-incrimination - Grant of immunity. No person shall be compelled to be a witness against himself in a criminal action. Notwithstanding any provision of law to the contrary, in any criminal proceedings before a court or grand jury or state's attorney's inquiry, if a person refuses to answer a question or produce evidence of any kind on the ground that he may be incriminated thereby, and if the prosecuting attorney, in writing and with approval of the attorney general, requests the court to order that person to answer the question or produce the evidence, the court after notice to the witness and hearing may so order, and that person shall comply with the order. In the case of a state's attorney's inquiry, such application shall be made to the district court. ~~After complying, and if, but for this section, he would have been privileged to withhold the answer given or evidence produced by him, that person shall not be prosecuted or subject to penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in accordance with the order, he gave answer or produced evidence. But he may nevertheless be prosecuted for any perjury. No testimony or other information compelled under the order, or any information directly or indirectly derived from the testimony, may be used against the witness in any criminal proceeding, except a prosecution for perjury, giving a false statement, or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.~~

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 399

HOUSE BILL NO. 1321
(Rydell, J. DeMers, Gates, Ulmer)

WITNESS COMPENSATION AND EXPENSES

AN ACT to amend and reenact section 31-01-16 of the North Dakota Century Code, relating to compensation and expenses for witnesses in criminal actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-01-16 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-16. Compensation and mileage and travel expense of witness - County to pay fees except for district court fees in criminal action. A witness in a civil or criminal case is entitled to receive:

1. A sum of ~~fifteen~~ twenty-five dollars for each day necessarily in attendance before the district or county court or before any other court, board, or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases such witness fees and expenses on the part of the state ~~shall~~ must be paid out of the county treasury of the proper county except that district court witness fees and expenses ~~shall~~ must be paid by the state. In no event ~~shall~~ may prisoners be compensated as witnesses under the provisions of this section.

Approved March 20, 1987
Filed March 23, 1987

JUDICIAL REMEDIES

CHAPTER 400

SENATE BILL NO. 2058
(Legislative Council)
(Interim Judiciary Committee)

EXEMPLARY DAMAGES

AN ACT to amend and reenact section 32-03-07 of the North Dakota Century Code, relating to claims for exemplary damages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 32-03-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03-07. When court or jury may give exemplary damages. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

Approved March 26, 1987
Filed March 30, 1987

* NOTE: Section 32-03-07 was also amended by section 15 of House Bill No. 1571, chapter 404.

CHAPTER 401

HOUSE BILL NO. 1079
(Representative Wald)
(Senator Nalewaja)

NONPROFIT CORPORATION DIRECTOR LIABILITY

AN ACT to provide immunity from civil liability to directors, officers, and trustees of nonprofit organizations; and to amend and reenact subsection 14 of section 10-24-05 of the North Dakota Century Code, relating to indemnification of directors and officers of nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Immunity of officers, directors, and trustees of nonprofit organizations. Any person who serves as a director, officer, or trustee of a nonprofit organization that is, or would qualify as a nonprofit organization that is, described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section 501(c) of the Internal Revenue Code of 1954 as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee of the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee of the nonprofit organization and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee of the nonprofit organization.

SECTION 2. AMENDMENT. Subsection 14 of section 10-24-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. When any claim is asserted, whether by action in court or otherwise, against any person by reason of his being or having been a director, or officer of a corporation, the court in the proceeding in which such claim has been asserted, or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity, may assess indemnity against the corporation, its receiver, or trustee, for the amount paid by such director or officer in satisfaction of any judgment on or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), and any expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable, provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of ~~actual~~ gross negligence or willful misconduct in the performance of his duties as such director or officer. The right and remedy provided by this section shall be exclusive when any action brought on such claim has resulted in judgment against the person claiming indemnity, or when the person claiming indemnity has paid or agreed to pay any sum in settlement of any such claim or action, and in such case indemnity shall be awarded only upon order of court pursuant to the provisions of this section. In all other cases the right and remedy provided by this section shall not be exclusive, but each corporation shall have power to indemnify any director or officer or former director or officer of such corporation against expense and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of ~~actual~~ gross negligence or willful misconduct in the performance of his duties as such director or officer.

Approved March 27, 1987

Filed March 30, 1987

CHAPTER 402

HOUSE BILL NO. 1080
(Representative Wald)
(Senator Nalewaja)

VOLUNTEER SERVICES CIVIL IMMUNITY

AN ACT to provide immunity from civil liability to volunteers providing services for nonprofit organizations and sports teams; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Immunity of volunteers providing services for nonprofit organizations. Except as provided in section 2 of this Act, any person who, on a volunteer basis, provides services or performs duties on behalf of a nonprofit organization is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties as a volunteer for the nonprofit organization.
2. The act or omission did not constitute willful misconduct or gross negligence.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

SECTION 2. Immunity of volunteer athletic coaches and officials.

1. Any person who provides services or assistance free of charge, except for reimbursement of expenses, as an athletic coach, manager, or official for a sports team which is organized or performing pursuant to a nonprofit or similar charter is immune from civil liability for any act or omission resulting in damage or injury to a player or participant if at the time of the act or omission all the following are met:
 - a. The person who caused the damage or injury was acting in good faith, in the exercise of reasonable and

ordinary care, and in the scope of that person's duties for the sports team.

- b. The act or omission did not constitute willful misconduct or gross negligence.
 - c. The coach, manager, or official had participated in a safety orientation and training program established by the league or team with which the person is affiliated.
2. This section does not grant immunity to:
- a. Any person causing damage as the result of the negligent operation of a motor vehicle.
 - b. Any person for any damage caused by that person permitting a sports competition or practice to be conducted without supervision.
 - c. Any athletic coach, manager, or official providing service as part of a public or private educational institution's athletic program.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 403

HOUSE BILL NO. 1631
(Wentz)

GOOD SAMARITAN ACT

AN ACT to create and enact chapter 32-03.1 of the North Dakota Century Code, relating to exemption for liability to encourage the public to render assistance to victims of accident and illness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Chapter 32-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

32-03.1-01. This Act shall be known and may be cited as the "Good Samaritan Act."

32-03.1-02. Definitions. For the purposes of this Act, the following terms shall have the designated meanings:

1. "Aid or assistance necessary or helpful in the circumstances" means any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed he could successfully undertake.
2. "Appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance" means any physician, nurse, emergency medical technician, or other medical or paramedical personnel whom the aider reasonably believes is such, based upon the representations of the person or that person's actions in providing medical aid.
3. "Employed expressly or actually" means either that the person's formal duties include the provision of emergency medical aid, or that the person customarily provides such

aid and is informally expected or relied upon to do so in the course of their employment.

4. "Gross negligence" means acts or omissions falling short of intentional misconduct which nevertheless show a failure to exercise even slight care or any conscious interest in the predictable consequences of the acts or omissions. For the purposes of this Act, "gross negligence" includes the failure of an aider to relinquish direction of the care of an injured or ill person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance assumes or attempts to assume responsibility for the care of the injured or ill person.

32-03.1-03. Actions barred. No person, or the person's employer, subject to the exceptions in sections 32-03.1-04, 32-03.1-05, and 32-03.1-09, who renders aid or assistance necessary or helpful in the circumstances to other persons who have been injured or are ill as the result of an accident or illness, or any mechanical, external or organic trauma, shall be named as a defendant or held liable in any personal injury civil action by any party in this state for acts or omissions arising out of a situation in which emergency aid or assistance is rendered, unless it is plainly alleged in the complaint and later proven that such person's acts or omissions constituted intentional misconduct or gross negligence.

32-03.1-04. Criminal immunity. No person who renders aid or assistance necessary or helpful in the circumstances to other persons who have been injured or are ill as the result of an accident or sudden illness, or any mechanical, external or organic trauma, shall be criminally charged in this state for having practiced medicine or nursing without a license, provided that the aider shall relinquish direction of the care of the injured person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance assumes responsibility for the care of the injured person.

32-03.1-05. Physicians or surgeons. Nothing in this Act shall be construed to deprive any physician or surgeon licensed in this state of the right to collect reasonable fees for any acts of aid, assistance or treatment; or any other person rendering aid or assistance under this Act, or those whose property is necessarily damaged in the course of such aid or assistance under this Act, of the right to reimbursement, from the injured or ill person or his estate for any expenses or damages which appeared reasonable and necessary to incur under the circumstances. Any person rendering aid or assistance with an expectation of remuneration shall not be covered by the provisions of this Act.

32-03.1-06. Exceptions. This Act shall not encompass any person who, at the time of the emergency, was employed expressly or actually for the purpose of providing emergency medical aid to humans, either within or outside of a hospital or other place or

vehicle with medical equipment, for emergency medical aid or other assistance rendered in the regular course of their employment. Such persons and their employers shall be liable for their acts and omissions in rendering emergency medical aid in the regular course of their employment, according to the prevailing law in this state in existence at the date this Act becomes effective.

32-03.1-07. Limited repealer. This Act supersedes any conflicting provision of law which is inconsistent with this Act except sections 23-27-04.1, 32-03-40, 32-03-42, 39-08-04.1, 43-12-33, 43-12-34, 43-17-37, and 43-17-38.

32-03.1-08. Costs and fees. Notwithstanding any other provision in the laws of this state, or any court rules, if a party names a defendant in a suit alleging intentional misconduct or gross negligence, as described in section 32-03.1-02, and the trial judge dismisses the complaint or grants a defendant's motion for judgment on the pleadings, or directs a verdict for a defendant, or grants a defendant's motion for judgment notwithstanding the verdict, or at any point in the proceedings grants a plaintiff's motion to discontinue the action against the defendant, the defendant shall be entitled to full costs and reasonable attorneys fees expended in connection with his defense of the action. If good reason is shown, the trial judge may suspend the operation of this section.

32-03.1-09. Actions not barred. Nothing in this Act shall be construed to bar a civil action by any injured or ill person or their survivors against any person for having tortiously caused an injury or emergency situation. Nothing in this Act shall be construed to relieve any person, tortiously causing an injury or emergency situation, from any affirmative duty to provide proper aid or assistance. If the defendant prevails in such an action, he shall be entitled to costs and fees only as the other statutes and court rules of this state provide.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 404

HOUSE BILL NO. 1571
(Representatives Payne, Koland, Skjerven)
(Senator Tallackson)

TORT LIABILITY

AN ACT to provide for comparative fault, several liability, separate finding of damages, reduction for collateral source payments, periodic payments, economic, noneconomic, and exemplary damages; to suspend or to repeal sections 9-10-07 and 32-03-07 of the North Dakota Century Code, relating to comparative negligence and exemplary damages; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definition. As used in this Act, "fault" includes acts or omissions that are in any measure negligent or reckless towards the person or property of the actor or others, or that subject a person to tort liability or dram shop liability. The term also includes strict liability for product defect, breach of warranty, negligence or assumption of risk, misuse of a product for which the defendant otherwise would be liable, and failure to exercise reasonable care to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

SECTION 2. Modified comparative fault. Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act

in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, and failure to avoid injury. Under this section, fault does not include any product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.

SECTION 3. Pure comparative fault - Product liability actions.

Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault means product liability involving negligence or strict liability or breach of warranty for product defect.

SECTION 4. Economic and noneconomic damages for wrongful death or injury to person. In any civil action for damages for wrongful death or injury to a person and whether arising out of breach of contract or tort, damages may be awarded by the trier of fact as follows:

1. Compensation for economic damages, which are damages arising from medical expenses and medical care, rehabilitation services, custodial care, loss of earnings and earning capacity, loss of income or support, burial costs, cost of substitute domestic services, loss of employment or business or employment opportunities and other monetary losses.
2. Compensation for noneconomic damages, which are damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, fear of injury, loss or illness, loss of society and companionship, loss of consortium, injury to reputation, humiliation and other nonpecuniary damage.

SECTION 5. Separate finding on damages. In awarding compensation for damages to any party, the trier of fact shall make separate findings which must specify:

1. The amount of compensation for past economic damages.
2. The amount of compensation for future economic damages.
3. The amount of compensation for noneconomic damages.

SECTION 6. Reduction for collateral source payments. After an award of economic damages, the party responsible for the payment thereof is entitled to and may apply to the court for a reduction of the economic damages to the extent that the economic losses presented to the trier of fact are covered by payment from a collateral source. A "collateral source" payment is any sum from any other source paid or to be paid to cover an economic loss which need not be repaid by the party recovering economic damages, but does not include life insurance, other death or retirement benefits, or any insurance or benefit purchased by the party recovering economic damages.

SECTION 7. Pleading of damages. Any pleading for damages for death or injury to a person may pray for economic and noneconomic damages separately. Any prayer for noneconomic damages of less than fifty thousand dollars or for economic damages may be for a specific dollar amount. Any prayer for noneconomic damages for fifty thousand dollars or more must be stated generally as "a reasonable sum but not less than fifty thousand dollars".

SECTION 8. Review of reasonableness of economic damages. In addition to any other remedy provided by law and after a jury award of economic damages, any party responsible for the payment of any part thereof may request a review of the reasonableness of the award by the court as follows:

1. Awards in excess of two hundred fifty thousand dollars before reduction for contributory fault and collateral source payments are subject to review for reasonableness under this Act.
2. The burden is on the moving party to establish that the amount of economic damage awarded was not reasonable in that it does not bear a reasonable relation to the economic damage incurred and to be incurred as proven by the party recovering the award.
3. If the court finds that the jury award of economic damages is unreasonable, the court shall reduce the award to reasonable economic damages.

SECTION 9. Periodic payments for continuing custodial care. If an injured party claims future economic damages for continuing institutional or custodial care that will be required for a period of more than two years, at the discretion of the court any party may request the trier of fact to make a special finding of the total amount awarded for this care, separate from other future economic damages, and if a separate award is made, any party may make periodic payments for this care in an amount approved by the court,

provided payment of the total award for this care is adequately secured. The adequacy of the periodic payments within the limit of the total award will be subject to review by the court from time to time, and upon the death of the injured person the obligation to provide for further continuing care shall terminate.

SECTION 10. Nondisclosure of reduction for collateral source payments. The jury may not be informed of the potential for the reduction of economic damages because of payments from collateral sources.

SECTION 11. When court or jury may give exemplary damages. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty by clear and convincing evidence of oppression, fraud, or malice, actual or presumed, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

SECTION 12. Post trial review. Motions for periodic payments, reductions of awards for contributory fault and collateral source payments, for review of the reasonableness of an award, and for setting the amount of exemplary damages, must be made to the judge who presided over the trial of the action, unless the judge is unable to act, in which case, the motion must be presented to a judge designated by the presiding judge of the district in which the trial was held. The motion must be made within ten days of the jury verdict, or order of the court, and if so made, judgment may not be entered until the motion has been ruled on.

SECTION 13. REPEAL. If this Act does not contain an expiration date, North Dakota Century Code sections 9-10-07 and 32-03-07 are hereby repealed.

SECTION 14. APPLICABILITY. This Act applies to claims for relief which accrue after the effective date of this Act.

* **SECTION 15. EXPIRATION DATE - SUSPENSION.** This Act is effective through June 30, 1993, and after that date is ineffective. North Dakota Century Code sections 9-10-07 and 32-03-07 are suspended from the effective date of this Act through June 30, 1993. Sections 9-10-07 and 32-03-07 as they existed on the day before the effective date of this Act are in effect on July 1, 1993.

Approved April 9, 1987
Filed April 9, 1987

* NOTE: Section 32-03-07 was also amended by section 1 of Senate Bill No. 2058, chapter 400.

CHAPTER 405

SENATE BILL NO. 2059
(Legislative Council)
(Interim Judiciary Committee)

POLITICAL SUBDIVISION LIABILITY TERMS

AN ACT to amend and reenact section 32-12.1-02 of the North Dakota Century Code, relating to the definitions concerning political subdivision liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Claim" means any claim permitted by this chapter brought against a political subdivision for an injury caused by a political subdivision or an employee of the political subdivision acting within the scope of the employee's employment or office.
2. "Commissioner" means the commissioner of insurance.
3. "Employee" means any officer, employee, board member, volunteer, or servant of a political subdivision, whether elected or appointed and whether or not compensated, but ~~shall~~ does not include an independent contractor, or any person performing tasks, the details of which the political subdivision has no right to control.
4. "Injury" means personal injury, death, or property damage. Personal injury includes sickness or disease sustained by any person caused by a political subdivision or an employee thereof. Property damage includes injury to or destruction of tangible property caused by a political subdivision or an employee thereof.
5. "Political subdivision":

- a. ~~Shall include~~ Includes all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.
- b. ~~Shall Does~~ not include nor may it be construed to mean either the state of North Dakota or any of the several agencies, boards, bureaus, commissions, councils, courts, departments, institutions, or offices of government which collectively constitute the government of the state of North Dakota.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 406

HOUSE BILL NO. 1332
(Representatives Myrdal, A. Olson, R. Berg)
(Senators Vosper, Lodoen)

PUNITIVE DAMAGES LIMITATIONS

AN ACT to amend and reenact subsection 2 of section 32-12.1-03, subsection 3 of section 32-12.1-04, and section 32-12.1-05 of the North Dakota Century Code, relating to the award of damages against political subdivisions, the liability of political subdivision employees, and the statute of limitations for actions brought against political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 32-12.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The liability of political subdivisions under this chapter ~~shall be~~ is limited to a total of two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence. ~~Liability for punitive or exemplary damages may exceed these limitations when such injuries have been caused by willful or malicious behavior or conduct regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence. In no event may a political subdivision be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.~~

SECTION 2. AMENDMENT. Subsection 3 of section 32-12.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. No employee may be held liable in the employee's personal capacity for acts or omissions of the employee occurring within the scope of the employee's employment unless the acts or omissions constitute reckless or grossly negligent conduct, or willful or wanton misconduct. An employee may

be personally liable for money damages for injuries when the injuries are proximately caused by the negligence, wrongful act, or omission of the employee acting outside the scope of the employee's employment or office. The plaintiff in such an action bears the burden of proof to show by clear and convincing evidence that the employee was either acting outside the scope of the employee's employment or office or the employee was acting within the scope of employment in a reckless, grossly negligent, willful, or wanton manner. Employees and political subdivisions may be jointly or severally liable for punitive or exemplary damages. The extent to which an employee may be personally liable pursuant to this section and whether the employee was acting within the scope of employment or office shall be specifically stated in a final judgment.

* SECTION 3. AMENDMENT. Section 32-12.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. ~~Except for punitive or exemplary damages for which a political subdivision may be held liable, an~~ An insurance policy or insurance contract purchased by a political subdivision pursuant to this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law.

Approved April 1, 1987
Filed April 2, 1987

* NOTE: Section 32-12.1-05 was also amended by section 1 of House Bill No. 1390, chapter 407.

CHAPTER 407

HOUSE BILL NO. 1390
(Wald)

POLITICAL SUBDIVISION LIABILITY INSURANCE

AN ACT to amend and reenact section 32-12.1-05 of the North Dakota Century Code, relating to the purchase of liability insurance by political subdivisions; and to repeal section 32-12.1-06 of the North Dakota Century Code, relating to the certification of political subdivision insurance to the commissioner of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 32-12.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. Except for punitive or exemplary damages for which a political subdivision may be held liable, an insurance policy or insurance contract purchased by a political subdivision pursuant to this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision pursuant to any other provision of law and if premium savings will result therefrom, any insurance policies purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

SECTION 2. REPEAL. Section 32-12.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 1, 1987
Filed April 2, 1987

* NOTE: Section 32-12.1-05 was also amended by section 3 of House Bill No. 1332, chapter 406.

CHAPTER 408

SENATE BILL NO. 2100
(Committee on Judiciary)
(At the request of the Commission on Uniform State Laws)

UNIFORM ARBITRATION ACT

AN ACT to adopt the Uniform Arbitration Act, relating to the enforcement of voluntary written agreements to arbitrate disputes; to amend and reenact sections 24-02-28 and 60-06-06.1 of the North Dakota Century Code, relating to arbitration procedures; and to repeal chapter 32-29 of the North Dakota Century Code, relating to the arbitration of controversies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Validity of arbitration agreement. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract. Sections 1 through 20 also apply to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement.

SECTION 2. Proceedings to compel or stay arbitration.

1. On application of a party showing an agreement described in section 1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application must be denied.
2. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, if in substantial and bona fide dispute, must be forthwith and summarily tried and the stay ordered if found for the

moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

3. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection 1, the application must be made therein. Otherwise and subject to section 18, the application may be made in any court of competent jurisdiction.
4. Any action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect to the severed issue only. If the application is made in an action or proceeding, the order for arbitration must include the stay.
5. An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated have not been shown.

SECTION 3. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, that method must be followed. In the absence of a method of appointment, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and the arbitrator's successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

SECTION 4. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by sections 1 through 20.

SECTION 5. Hearing. Unless otherwise provided by the agreement:

1. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed

promptly with the hearing and determination of the controversy.

2. The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
3. The hearing must be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

SECTION 6. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under sections 1 through 20. A waiver of that right prior to the proceeding or hearing is ineffective.

SECTION 7. Witnesses - Subpoenas - Depositions.

1. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and have the power to administer oaths. Subpoenas so issued must be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.
2. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
3. All provisions of law compelling a person under subpoena to testify are applicable.
4. Fees for attendance as witnesses are the same as provided in section 31-01-16 for witnesses in district courts.

SECTION 8. Award.

1. The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.
2. An award must be made within the time fixed by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the

expiration thereof. A party waives the objection that an award was not made within the time required unless that party notifies the arbitrators of an objection before delivery of the award to that party.

SECTION 9. Change of award by arbitrators. On application of a party or, if an application to the court is pending under section 11, 12, or 13, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions a and b of subsection 1 of section 13, or for the purpose of clarifying the award. The application must be made within twenty days after delivery of the award to the applicant. Written notice of the application must be given to the opposing party, stating that the opposing party shall serve objections to the application, if any, within ten days from the notice. The award so modified or corrected is subject to sections 11, 12, and 13.

SECTION 10. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

SECTION 11. Confirmation of an award. On application of a party, the court shall confirm an award, unless, within the time limits imposed by sections 1 through 20, grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 12 and 13.

SECTION 12. Vacating an award.

1. On application of a party, the court shall vacate an award if:
 - a. The award was procured by corruption, fraud, or other undue means;
 - b. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
 - c. The arbitrators exceeded their powers;
 - d. The arbitrators refused to postpone the hearing after sufficient cause was shown to postpone it or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to section 5, as to prejudice substantially the rights of a party; or
 - e. There was no arbitration agreement and the issue was not adversely determined in proceedings under

section 2 and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

2. An application under this section must be made within ninety days after delivery of a copy of the award to the applicant, but, if predicated upon corruption, fraud, or other undue means, it must be made within ninety days after those grounds are known or should have been known.
3. In vacating the award on grounds other than stated in subdivision e of subsection 1, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of an agreement, by the court in accordance with section 3, or if the award is vacated on grounds set forth in subdivisions c and d of subsection 1, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 3. The time within which the agreement requires the award to be made applies to the rehearing and commences from the date of the order.
4. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

SECTION 13. Modification or correction of award.

1. Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:
 - a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
 - b. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
 - c. The award is imperfect in a matter of form, not affecting the merits of the controversy.
2. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

3. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

SECTION 14. Judgment or decree on award. On the granting of an order confirming, modifying, or correcting an award, judgment or decree must be entered in conformity with the order and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court.

SECTION 15. Judgment roll - Docketing.

1. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:
 - a. The agreement and each written extension of the time within which to make the award.
 - b. The award.
 - c. A copy of the order confirming, modifying, or correcting the award.
 - d. A copy of the judgment or decree.
2. The judgment or decree may be docketed as if rendered in an action.

SECTION 16. Applications to court. Except as otherwise provided, an application to the court under sections 1 through 20 must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in a civil action.

SECTION 17. Court - Jurisdiction. The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section 1 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under sections 1 through 20 and to enter judgment on an award under the agreement.

SECTION 18. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county in which the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs.

SECTION 19. Appeals.

1. An appeal may be taken to the supreme court from any of the following:
 - a. An order denying an application to compel arbitration made under section 2.
 - b. An order granting an application to stay arbitration made under subsection 2 of section 2.
 - c. An order confirming or denying confirmation of an award.
 - d. An order modifying or correcting an award.
 - e. An order vacating an award without directing a rehearing.
 - f. A judgment or decree entered pursuant to sections 1 through 20.
2. The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action.

SECTION 20. Application. Sections 1 through 20 apply only to agreements made after June 30, 1987.

SECTION 21. AMENDMENT. Section 24-02-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-28. Procedure for arbitration. When After a board of arbitration shall have has been appointed, a submission in writing shall must be executed as provided in section 32-29-02 1 of this Act, except that such but the submission must provide for the entry of judgment upon the award by the district court of the county within in which the improvement, or some part thereof, involved in the contract is located. Such The county must be specified in such the submission. The submission must be executed by the commissioner. Thereupon After submission of the arbitration agreement the arbitration shall must proceed in accordance with the provisions of chapter 32-29 sections 1 through 20 of this Act.

* **SECTION 22. AMENDMENT.** Section 60-06-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-06.1. Arbitration by public service commission - Appropriation. On agreement of all parties concerned, the parties may petition the public service commission to serve as an arbitrator of rights governed under this chapter. The commission shall serve as an arbitrator in accordance with chapter 32-29 sections 1 through 20 of this Act and the parties' rights of appeal are as limited by chapter 32-29 sections 1 through 20 of this Act. The parties requesting the

* NOTE: Section 60-06-06.1 was also amended by section 3 of House Bill No. 1347, chapter 737.

arbitration proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain ~~such~~ those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered ~~or certified~~ mail. ~~Upon order for payment, the parties, within~~ Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the public utility valuation revolving fund in the state treasury. All moneys transferred or deposited in the public utility valuation revolving fund for the payment of costs and expenses incurred under this section are hereby appropriated. These moneys are not subject to section 54-44.1-11.

SECTION 23. REPEAL. Chapter 32-29 of the North Dakota Century Code is hereby repealed.

Approved March 26, 1987
Filed March 30, 1987

LABOR AND EMPLOYMENT

CHAPTER 409

HOUSE BILL NO. 1560
(Ulmer, Stofferahn)

NONUNION EMPLOYEE REPRESENTATION EXPENSES

AN ACT to create and enact a new section to chapter 34-01 of the North Dakota Century Code, relating to assessment by a labor union or labor organization of actual representation expenses from nonunion employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Collection of actual representation expenses from nonunion employees. As used in this section, "actual representation expenses" are only those actual expenses which are sustained by a labor union or labor organization in processing any grievance of a nonunion employee. For grievances arising from actions occurring while an employee was a member of a bargaining unit of a management entity with which a labor union or labor organization has a contract, but while that employee was not a member of that union or organization, that labor union or labor organization shall collect actual representation expenses from that nonunion employee. Actual representation expenses may be assessed only in instances in which a nonunion employee has specifically requested in writing to use representation by the labor union or labor organization. A nonunion employee may not be compelled to pay any expenses incurred by a labor union or labor organization in the course of general contract negotiations or collective bargaining. An assessment under this section is not an abridgement of any rights guaranteed under section 34-01-14. This section does not abridge or in any way interfere with rights guaranteed employees generally under the Labor Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.].

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 410

HOUSE BILL NO. 1612
(Oban, J. DeMers)

MARITAL STATUS IN STATE EMPLOYMENT

AN ACT to create and enact a new section to chapter 34-11.1 of the North Dakota Century Code, relating to rights of state employees to employment with their spouses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-11.1 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Discrimination on basis of marital status in state employment prohibited - Exception. Each state employee is, if otherwise qualified, entitled to work with that state employee's spouse. A state agency may not discriminate against an employee or an applicant for employment, with respect to working conditions, work place assignment, or other privileges of employment, merely because the spouse of that employee or applicant is also an employee of that state agency. However, the prohibition does not apply to employment of the spouse of a person who has the power to hire or fire, or to make evaluations of performance, with respect to the position involved.

Approved March 12, 1987
Filed March 16, 1987

LIENS

CHAPTER 411

SENATE BILL NO. 2455
(Lashkowitz, Maxson)

LIEN STATEMENT ADDRESSES

AN ACT to create and enact a new section to chapter 35-01 of the North Dakota Century Code, relating to lien statement requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Last known address required for valid lien statement. Notwithstanding any other provision of law concerning the filing of lien statements, the lien statement filed against an individual must contain the last known address of the debtor in order to be valid.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 412

HOUSE BILL NO. 1349
(Representatives A. Hausauer, Gunsch, A. Olson)
(Senator W. Meyer)

AGRICULTURAL LIENS

AN ACT to create and enact two new chapters to title 35 of the North Dakota Century Code, relating to statutory agricultural liens; to amend and reenact sections 11-18-14, 11-29-24, 35-21-01, and subsection 9 of section 41-09-28 of the North Dakota Century Code, relating to duties of the county register of deeds, county seed, feed, and fuel liens, release of liens, and to information that must be filed with the secretary of state under the central notice system; to repeal chapters 35-07, 35-08, 35-09, and 35-10 of the North Dakota Century Code, relating to threshing or drying liens, crop production liens, motor fuel liens, fertilizer, farm chemicals, or seed liens, and sugar beet production liens; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-18-14. Register of deeds to remove and destroy certain documents - Records to be made. The register of deeds in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in ~~his~~ the register's office, and destroy, all seed liens, ~~labor liens, stallion liens,~~ chattel mortgages, threshing or drying liens, crop production liens, combining liens, agricultural processor's liens, agricultural supplier's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the same upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the register of deeds shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the same was destroyed.

SECTION 2. AMENDMENT. Section 11-29-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-29-24. Lien on crops for seed, feed, or fuel furnished by county - How obtained. In order to secure a lien upon crops for seed, feed, or fuel furnished by the county under this chapter, the county, through the county auditor, shall comply with the provisions of chapter 35-08 section 4 of this Act.

SECTION 3. A new chapter to title 35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Agricultural processor's lien authorized. Any person who processes any crop or agricultural product is entitled to a lien upon the crop or product processed for the reasonable value of the services performed. As used in this chapter, the term "processor" includes persons threshing, combining, drying, or harvesting any crop or agricultural product. The agricultural processor's lien is effective from the date the processing is completed.

Procedure to obtain lien. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a verified statement in the office of the register of deeds in the county or counties in which the crop or agricultural product was grown. The statement must contain the following information:

1. The name and address of the person for whom the processing was done.
2. The name and address of the processor.
3. A description of the crops or agricultural products and their amount, if known, subject to the lien together with the legal description as to the location where the crops or agricultural products were grown.
4. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.

Priority. An agricultural processor's lien obtained under this chapter has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances.

SECTION 4. A new chapter to title 35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Agricultural supplier's lien authorized. Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. The agricultural supplier's lien is effective from the date the supplies are furnished or the services performed.

Procedure to obtain lien. To obtain an agricultural supplier's lien, the person entitled to the lien, within ninety days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of the county or counties in which the crop, agricultural product, or livestock was grown. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with the legal description as to the location of the crops, agricultural products, or livestock.
4. A description and value of the supplies furnished.

Priority. An agricultural supplier's lien obtained under the provisions of this chapter has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances except any agricultural processor's lien.

SECTION 5. AMENDMENT. Section 35-21-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-21-01. Release of lien by undertaking authorized. When any mechanic's lien, garage storage lien, repairman's lien, seed lien, sugar beet production lien, crop production lien, threshing lien, agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the ~~real property or personal~~ property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

SECTION 6. AMENDMENT. Subsection 9 of section 41-09-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes, but is not limited to, liens for threshing; crop or agricultural product processing; crop production; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for such security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In

order to appear on the list or lists, secured parties or lienholders must file with the secretary of state a form prescribed by him the secretary of state which contains all of the following information:

- a. The name and address of the person engaged in farming operations.
- b. The county of residence of the person engaged in farming operations.
- c. The social security number of the person engaged in farming operations or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the debtor except that the social security number is not required for a crop, agricultural processor's or agricultural supplier's lien obtained under section 3 or 4 of this Act unless the social security number is required for certification of the central notice system pursuant to section 1324 of the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631].
- d. The name and address of the secured party or lienholder.
- e. A description of the crops or livestock and their amount, if known, subject to the security interest or lien.
- f. The legal description as to the location of the crops or livestock.
- g. The signature of the debtor against whom the loan or lien is filed is not required unless the signature is required for certification of the central notice system pursuant to section 1324 of the Food Security Act of 1985 [Pub.L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631].
- h. The signature of the secured party or lienholder.

A form filed pursuant to this section is effective for a period of five years. The effectiveness and continuation of the form filed is to be treated as if it were filed as a financing statement.

SECTION 7. REPEAL. Chapters 35-08, 35-09, and 35-10 of the North Dakota Century Code, and chapter 35-07 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 413

SENATE BILL NO. 2433
(Lips)

CROP MORTGAGE FINANCING STATEMENTS

AN ACT to amend and reenact section 35-05-01.1 of the North Dakota Century Code, relating to duration of financing statements on crop mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-05-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-05-01.1. Crop liens - Limitations - Exceptions. A security interest upon crops shall attach only to the crop next maturing after the delivery of the security agreement. The effectiveness of a financing statement covering the crop lapses on the expiration of a period of five years from the date of filing unless terminated. The provisions of this section shall not apply to liens by contract given to secure the purchase price or the rental of land upon which the crops covered by the lien are to be grown.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 414

HOUSE BILL NO. 1266
(Representatives Opedahl, J. Nelson)
(Senators Bakewell, Yockim)

REPAIRMEN'S LIEN STATEMENTS

AN ACT to amend and reenact sections 35-13-02 and 35-13-03 of the North Dakota Century Code, relating to filing of repairman's lien statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-02. Lien statement - Contents - When required - Filing. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired shall not be required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:

1. The labor performed.
2. The materials furnished.
3. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
4. The name of the person for whom the labor was performed or to whom the materials were furnished.
5. A description of the property upon which the lien is claimed.

A person filing a verified statement shall within twenty days serve notice of the filing, by registered ~~or certified~~ mail, upon the

owner or legal possessor of the property. A person entitled to the lien who fails to file a verified statement within the time limited in this section is deemed to have waived the right to a lien.

SECTION 2. AMENDMENT. Section 35-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-03. Separate articles of personal property may be included in one lien statement. Any person entitled to a lien under this chapter who makes, alters, or repairs more than one article of personal property for the same owner or legal possessor may include all the articles of personal property so made, altered, or repaired within ninety days, or if the property is used in the exploration for or the production of oil or gas within six months, preceding the filing of the lien statement in the same statement, and the statement shall have the same force and effect as though a separate statement had been filed for each article.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 415

SENATE BILL NO. 2316
(Senators D. Meyer, Langley)
(Representative Tomac)

AGISTER'S LIEN PROCEDURES

AN ACT to create and enact three new sections to chapter 35-17 of the North Dakota Century Code, relating to agister's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Agister's lien by filing - Priority of lien. In addition to sections 35-17-01 and 35-17-02, any person to whom any horses, mules, cattle, or sheep are entrusted by the owner for the purpose of feeding, herding, pasturing, or ranching, upon filing the statement prescribed in section 2 of this Act, is entitled to a lien upon the horses, mules, cattle, or sheep for the amount that may be due for feeding, herding, pasturing, or ranching, effective from the date the person entitled to the lien comes into possession of the horses, mules, cattle, or sheep. An agister's lien has priority, as to the animals covered by the lien, over all other liens or encumbrances, except agricultural processors' or agricultural suppliers' liens. This section does not apply to stolen stock.

SECTION 2. A new section to chapter 35-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Procedure to obtain lien - Statement filed - Contents - Waiver. Any person entitled to an agister's lien, within ninety days after taking possession of the horses, mules, cattle, or sheep, may file in the office of the register of deeds of the county in which the owner of the horses, mules, cattle, or sheep resides, a verified statement containing all of the following:

1. The number of and a description of the animals.
2. The name of the person for whom the horses, mules, cattle, or sheep are kept.

3. The price agreed upon for keeping the animals and, if no price was agreed upon, the reasonable value of the services.

If the statement is not filed within ninety days as required by this section, the person entitled to the lien under section 1 of this Act waives the lien.

SECTION 3. A new section to chapter 35-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Information to be filed by a lienholder with the secretary of state. If the lienholder intends to impose liability for a lien under section 1 of this Act against a livestock buyer, the name of the lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, lienholders must file with the secretary of state a form prescribed by him which contains all of the following information:

1. The name and address of the person for whom the livestock is kept.
2. The county of residence of the person for whom the livestock is kept.
3. The social security number of the person for whom the livestock is kept.
4. The name and address of the lienholder.
5. A description of the livestock and their number, if known, subject to the lien.
6. The county where the livestock are born or growing.
7. The signature of the debtor against whom the lien is filed.
8. The signature of the secured party or lienholder.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 416

HOUSE BILL NO. 1510
(Representatives R. Berg, Gorman)
(Senator Yockim)

MECHANIC'S LIEN FORFEITURE

AN ACT to amend and reenact section 35-27-25 of the North Dakota Century Code, relating to information required to enforce a mechanic's lien.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-27-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-25. Requiring suit to be commenced - Demand - Limitations of action. Upon written demand of the owner, ~~his that person's~~ agent, or contractor, served on the person holding the lien, suit ~~shall~~ must be commenced and filed with the clerk of court within thirty days thereafter or the lien ~~shall be is~~ forfeited. The demand must contain a provision informing the person holding the lien that if suit is not commenced within thirty days, the person holding the lien forfeits the lien. No lien ~~shall be is~~ valid or effective as such, nor ~~shall the same~~ may be enforced in any case, unless the holder thereof ~~shall assert~~ asserts the same by complaint filed with the clerk of court within three years after the date of recording of the verified notice of intention to claim a mechanic's lien. If a summons and complaint asserting the validity of the lien is not filed in the office of the clerk of court of the county in which the lien is recorded within the limitations provided by this section, the lien is deemed satisfied and the clerk of court shall, upon request of any interested person, certify to the register of deeds that no summons and complaint has been filed and the lien is deemed satisfied under this section, who then shall record the verified certificate.

Approved March 20, 1987
Filed March 23, 1987

LIVESTOCK

CHAPTER 417

SENATE BILL NO. 2486
(W. Meyer, D. Meyer)

LIVESTOCK AUCTION GRIEVANCES

AN ACT to create and enact a new section to chapter 36-05 of the North Dakota Century Code, relating to the establishment of a livestock auction marketing grievance committee; and to amend and reenact section 36-05-11 of the North Dakota Century Code, relating to the inspection and treatment of livestock before removal from an auction market.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Grievance committee. Any livestock auction market having a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian having a complaint against the auction market to which the veterinarian is assigned may submit a written complaint to the grievance committee. The grievance committee consists of the president of the North Dakota stockmen's association or the president's designee, the president of the livestock auction market association or the president's designee, and the president of the North Dakota veterinarian medical association or the president's designee. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report its recommendation to the livestock sanitary board within thirty days after receipt of the complaint.

SECTION 2. AMENDMENT. Section 36-05-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-11. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment. No operator of a livestock auction market shall permit the removal of any livestock from the establishment until such livestock has been treated in accordance with the regulations prescribed by the state livestock sanitary board. The authorized veterinarian of such board shall furnish to each purchaser a certificate showing that inspection has been made

and treatment administered as provided by the rules and regulations of the state livestock sanitary board. If livestock is destined to be shipped interstate, the certificate shall show that it has been inspected in accordance with the requirements of the state of destination. If livestock is destined to be shipped interstate, the authorized veterinarian of such board shall furnish to each purchaser a certificate showing that inspection has been made and treatment administered in accordance with the requirements of the state of destination. All fees for veterinary inspection, treatment, and services, including brand inspection, shall be collected by the operator of the livestock auction market and paid to the inspector.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 418

SENATE BILL NO. 2160
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

BRAND RECORDING FEES

AN ACT to amend and reenact section 36-09-13 of the North Dakota Century Code, relating to the fee for recording and rerecording of brands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-13. Recording and rerecording of brands - Fee. The rerecording of abandoned livestock brands or marks, and the recording of new brands and marks, shall conform in all respects to this chapter. Each application for recording and rerecording must be accompanied by a fee of ten dollars for each place or position upon the each type of livestock where the brand or mark is to be placed. ~~if the brand or mark is to be placed upon more than one kind of livestock, the fee is ten dollars for each brand position upon the type of livestock with the greatest number of brand positions.~~

Approved March 26, 1987
Filed March 30, 1987

MILITARY

CHAPTER 419

HOUSE BILL NO. 1301
(Martinson)

NATIONAL GUARD TUITION

AN ACT to amend and reenact sections 37-07.1-03, 37-07.1-05, 37-07.1-06, and 37-07.2-01 of the North Dakota Century Code, relating to national guard tuition waivers and grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-07.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07.1-03. Tuition assistance - Waiver of tuition fees - Term of waiver Terms. Any qualifying member of the national guard who ~~shall enroll~~ enrolls in any state-controlled school ~~shall may~~, subject to the limitations of available appropriated funds and subject to national guard ~~regulations which~~ rules that may be promulgated by the adjutant general, receive tuition assistance in an amount not to exceed fifty percent of the tuition fees charged by the school. In addition, the qualifying member may be entitled to the waiver of seventy-five an amount, as determined by the adjutant general pursuant to national guard rules, not to exceed twenty-five percent of the tuition fees of the school and not to exceed fifty percent of the amount of tuition assistance paid by the adjutant general. The tuition assistance and waiver shall be are valid only so long as the member of the national guard maintains satisfactory performance with the guard, meets the qualification requirements of rules promulgated by the adjutant general, and pursues a course of study in a manner which satisfies the normal requirements of the school.

SECTION 2. AMENDMENT. Section 37-07.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07.1-05. Application for waiver. It ~~shall be~~ is the responsibility of the individual member of the national guard to obtain a certificate from the adjutant general or the adjutant general's designee attesting to satisfactory guard performance and describing qualification requirements, and to present the

certificate to the school in order to obtain a waiver of tuition fees. The certification ~~shall~~ must be accomplished at the time of enrollment for each semester or academic term for which a waiver of tuition fees is requested.

SECTION 3. AMENDMENT. Section 37-07.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07.1-06. Reimbursement of tuition fee waived Tuition - Assistance payments. The adjutant general shall reimburse may make tuition assistance payments directly and certify the qualifying amount of tuition to be waived to the appropriate school for two-thirds of all tuition fees waived under the provision of this chapter credit to the account of the enrolled member. The amount of tuition to be waived shall not exceed fifty percent of the tuition assistance payments made by the adjutant general.

SECTION 4. AMENDMENT. Section 37-07.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-07.2-01. National guard tuition grants - Terms of grants. Any qualifying member of the national guard who shall enroll enrolls in any private nonprofit college or university in North Dakota granting a four-year baccalaureate degree ~~shall~~ may, subject to the limitations of available appropriated funds and subject to national guard regulations which rules that may be promulgated by the adjutant general, ~~be entitled to~~ receive a grant in the an amount of not to exceed fifty percent of the tuition fees charged by the school, but not in excess of the tuition for similar courses and credit hours at the university of North Dakota. Any private nonprofit college or university which shall agree that agrees to participate in such a program ~~shall~~ must waive tuition for qualifying national guardsmen in an amount equal to, as determined by the adjutant general pursuant to national guard rules, not to exceed twenty-five percent of the tuition for similar courses and credit hours at the university of North Dakota. The use of the grant ~~shall~~ may not be restricted to the payment of such tuition fees by the member of the national guard. These grants ~~shall~~ must be distributed according to rules and regulations promulgated by the adjutant general and ~~shall~~ be are available only so long as the member maintains satisfactory performance with the guard, meets the qualification requirements of the rules, and pursues a course of study which satisfies the normal requirements of the school. As used in this chapter the word "tuition" has the same meaning as provided in section 37-07.1-02.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 420

HOUSE BILL NO. 1119
(Committee on Political Subdivisions)
(At the request of the Department of Veterans' Affairs)

VETERANS SERVICE OFFICER

AN ACT to amend and reenact section 37-14-18 of the North Dakota Century Code, relating to county veterans service officer appointment and duties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-18. County veterans' service officer - Appointment - Duties. The board of county commissioners of each county of the state of North Dakota may appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. Such appointment shall be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in 37-19.1-02. It shall be the duty of such county veterans' service officer to acquaint himself become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist such returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also shall be the duty of the county veterans' service officer, under the supervision of the state commissioner of veterans' affairs, to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which he the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and women servicewomen in civilian pursuits.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 421

SENATE BILL NO. 2114
(Committee on Social Services and Veterans Affairs)
(At the request of the Veterans' Home)

VETERANS' HOME ADMISSIONS

AN ACT to amend and reenact section 37-15-10.1 and subsection 1 of section 37-18.1-03 of the North Dakota Century Code, relating to the priorities for admission to the veterans' home and the makeup of the subcommittees of the administrative committee on veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-10.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-10.1. Priorities for admission to veterans' home. If the veterans' home is full and a waiting list for admission is necessary, further admission to the veterans' home must be according to the following listing of priorities, so long as the individual meets the admission requirements of sections 37-15-02 and 37-15-10:

1. Veterans with service-connected disability.
2. ~~Prisoners~~ American ex-prisoners of war.
3. Wartime veterans with nonservice-connected disability.
4. Wartime veterans.
5. Discharged North Dakota national guard members who became disabled in the line and discharge of duty.
6. Veterans with nonservice-connected disability.
7. Veterans.
8. Spouses.
9. Surviving spouses.

An individual whose priority is higher than another individual's must be admitted before that other individual.

SECTION 2. AMENDMENT. Subsection 1 of section 37-18.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The chairman and secretary of the committee, acting jointly, shall appoint from the voting membership of the committee, two subcommittees: a ~~five-member~~ subcommittee to be responsible for supervision and government of the veterans' home, and a ~~seven-member~~ subcommittee to be responsible for supervision and government of the department of veterans' affairs. Once appointed, a subcommittee member shall continue to serve as long as he remains a voting member of the committee, unless removed from the subcommittee by the committee chairman and secretary, acting jointly. In no case shall any one voting member serve on both subcommittees at the same time, and each nominating organization listed in section 37-18.1-01 shall have at least one voting member nominated by it serving on each subcommittee. From the membership of each subcommittee, a chairman will be selected by majority vote to preside over it for the term of one year. No person shall be permitted to serve as chairman of the committee and as chairman of a subcommittee simultaneously. A majority of the members of the subcommittee shall be required for a quorum, and a majority of the members present voting in favor thereof shall be required for any action.

Approved March 12, 1987
Filed March 16, 1987

MINING AND GAS AND OIL PRODUCTION

CHAPTER 422

SENATE BILL NO. 2187
(Committee on Natural Resources)
(At the request of the Industrial Commission)

ILLEGAL GAS AND OIL

AN ACT to amend and reenact subsections 5 and 6 of section 38-08-02 of the North Dakota Century Code, relating to the definition of the terms illegal gas and illegal oil.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5 and 6 of section 38-08-02 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Illegal gas" means gas which has been produced from any well within this state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any gas produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any gas produced or removed from the well premises without the knowledge and consent of the operator.
6. "Illegal oil" means oil which has been produced from any well within the state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any oil produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any oil produced or removed from the well premises without the knowledge and consent of the operator.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 423

HOUSE BILL NO. 1460
(Representative A. Olson)
(Senator Krauter)

OIL AND GAS BONDS

AN ACT to amend and reenact subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the oil and gas bonding authority of the industrial commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 38-08-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To require:
 - a. Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.
 - b. The making and filing with the industrial commission of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys if taken, and the filing of reports on well location, drilling, and production.
 - c. The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas ~~stratum~~ strata, the pollution of freshwater supplies by oil, gas, or saltwater, and to prevent blowouts, cavings, seepages, and fires.
 - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with ~~the provisions of~~ this chapter, and the rules and ~~regulations~~ orders of the industrial commission ~~of the state of North Dakota~~ prescribed to govern the production of oil and gas on state and

private lands within the state of North Dakota, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit cash or property under such terms and conditions as the industrial commission may prescribe.

- e. That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
- f. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
- g. Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
- h. Metering or other measuring of oil, gas, or product in pipelines, gathering systems, barge terminals, loading racks, refineries, or other places.
- i. That every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state ~~shall~~ must keep and maintain within this state complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may prescribe with respect to such oil or gas or the products thereof.
- j. The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
- k. The filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 424

SENATE BILL NO. 2183
(Committee on Natural Resources)
(At the request of the Industrial Commission)

ABANDONED WELL PLUGGING AND RECLAMATION

AN ACT to create and enact four new sections to chapter 38-08 of the North Dakota Century Code, relating to the powers, rights, and liabilities of the industrial commission in plugging or replugging abandoned wells and the reclamation of well sites; to amend and reenact sections 38-08-04.4 and 38-08-04.5 of the North Dakota Century Code, relating to the industrial commission entering into contracts for the plugging or replugging of wells and site reclamation and the establishment of an abandoned oil and gas well plugging and site reclamation fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-04.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-04.4. Commission authorized to enter into contracts. The commission is hereby authorized to enter into ~~contracts~~ public and private contractual agreements for the plugging or replugging of oil and gas or injection wells and the reclamation of abandoned oil and gas or injection well sites if any of the following apply:

1. The person or company drilling or operating the well cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, or cannot be legally required to plug or replug the well or to reclaim the well site; and.
2. There is no surety bond covering the well to be plugged or the site to be reclaimed or there is a forfeited surety bond but the cost of plugging or replugging the well or reclaiming the site exceeds the amount of the bond.
3. The well is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Reclamation work shall be limited to abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads. Sealed bids for any well plugging or reclamation work under this section shall be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids shall be addressed to the commission and shall be opened publicly at an industrial commission meeting designated in the notice. The contract shall be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to plug or replug such wells under such rules as the commission may prescribe.

The contracts for the plugging or replugging of wells or the reclamation of well sites shall be on terms and conditions as ~~set~~ prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

SECTION 2. AMENDMENT. Section 38-08-04.5 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund. There is hereby created an abandoned oil and gas well plugging and site ~~restoration~~ reclamation fund.

1. Revenue to the fund shall include:

- a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
- b. Moneys received from the forfeiture of drilling and reclamation bonds.
- c. Moneys received from any federal agency for the purpose of this section.
- d. Moneys donated to the commission for the purposes of this section.
- e. Moneys received from the state's oil and gas impact fund.
- f. Moneys recovered under the provisions of section 4 of this Act.
- g. Moneys recovered from the sale of equipment confiscated under the provisions of section 5 of this Act.

- h. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
2. Moneys in the fund may be used for the following purposes:
- a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production pits, saltwater disposal pits, drilling fluid pits, and access roads.
3. Whenever All moneys collected under this section shall be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. However, when the money accumulated in the fund exceeds fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission shall must be deposited in the general fund.

SECTION 3. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Right of entry. The commission, its agents, employees, or contractors shall have the right to enter any land for the purpose of plugging or replugging a well or the restoration of a well site as provided in section 38-08-04.4.

SECTION 4. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Recovery for costs of plugging. If the commission, its agents, employees, or contractors plugs or replugs a well or reclaims a well site under the provisions of this Act, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator of the well at the time the well is required to be plugged and abandoned or any or all persons who own a working interest in the well at the time the well is required to be plugged and abandoned as a result of the ownership of a lease or mineral interest in the property on which the well is located. The term "working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well or reclaiming any well site through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit

under this section shall be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site is located or the county in which any defendant resides.

SECTION 5. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confiscation of equipment to cover plugging costs. If the commission, its agents, employees, or contractors plugs, replugs a well, or restores a well site pursuant to this Act, the commission, after notice and hearing, may order the confiscation of any production-related equipment at the abandoned well site owned by the operator or any working interest owner for the purpose of wholly or partially compensating the state for the cost of plugging or replugging or site restoration.

SECTION 6. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Penalties and other relief. The plugging or replugging of a well or reclamation of a well site by the commission, its agents, employees, or contractors, shall not prevent the commission from seeking penalties or other relief provided by law from any person who is required by statutes, rules, or order of the commission to plug or replug a well or reclaim the surface.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 425

SENATE BILL NO. 2193
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION REHEARING

AN ACT to amend and reenact section 38-08-13 of the North Dakota Century Code, relating to the procedure for applying for a rehearing before the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-13. Person adversely affected may apply for rehearing. Any person adversely affected by any ~~rule, regulation, or~~ order of the commission may within thirty days after its effective date apply to the commission in writing for a the entry of such order file in writing a petition for rehearing. The application for rehearing shall be acted upon within fifteen days after its filing, and if petition must state with particularity the evidence, facts, points of law, or newly discovered evidence which in the opinion of the petitioner indicate the order of the commission is erroneous. The commission shall grant or deny any such petition in whole or in part within thirty days after the same is filed. If a petition for rehearing is granted, the rehearing shall be held without undue delay.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 426

SENATE BILL NO. 2180
(Committee on Judiciary)
(At the request of the Industrial Commission)

APPEAL OF INDUSTRIAL COMMISSION ORDERS

AN ACT to amend and reenact subsection 1 of section 38-08-14 of the North Dakota Century Code, relating to the procedure for appealing an order of the industrial commission to the district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 38-08-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person adversely affected by an order entered by the commission may appeal from such order to the district court of Burleigh County. Notice of appeal must be filed by such person with the commission within thirty days after the entry of the order complained of by the appellant, or in the event a petition for rehearing has been filed as provided herein within thirty days following the entry of the order overruling a motion for rehearing or either sustaining or overruling the original order in the event a motion for rehearing has been filed, or within thirty days after the day upon which a petition for rehearing is denied. A copy of the notice of appeal shall be filed with the district court of Burleigh County at the same time the notice of appeal is filed with the commission. The notice of appeal must identify the order and the grounds of appeal, and reasonably specify that portion of the record which the appellant desires included in the transcript upon appeal. Immediately upon the filing of the notice of appeal the commission shall certify to the appellant the estimated cost of preparing the transcript of appeal of the proceedings upon which the order complained of was entered. The amount of the estimated cost must be deposited with the commission within ten days after the mailing of the certification of the costs to the appellant. Upon the deposit of the costs the commission shall prepare and certify under its seal

* NOTE: Section 38-08-14 was also amended by section 1 of House Bill No. 1061, chapter 427.

the transcript. The transcript shall be delivered to the district court of Burleigh County within sixty days after the filing of the notice of appeal. A copy of the transcript shall be delivered to the appellant, or his designated attorney, upon deposit of the cost of preparing same with the commission. Fees charged and collected for the transcript of evidence may be paid to the person preparing such transcript.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 427

HOUSE BILL NO. 1061
(Legislative Council)
(Interim Oil and Gas Committee)

INDUSTRIAL COMMISSION ORDER APPEALS

AN ACT to amend and reenact subsection 1 of section 38-08-14 of the North Dakota Century Code, relating to appeals from industrial commission orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 38-08-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person adversely affected by an order entered by the commission may appeal from such order to the district court of Burleigh County for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal must be taken to the district court for any county in or under which any part of the affected property is located. Notice of appeal must be filed by such person with the commission within thirty days after the entry of the order complained of by the appellant, or within thirty days following the order overruling a motion for rehearing or sustaining the original order in the event a motion for rehearing has been filed. A copy of the notice of appeal shall be filed with the district court of Burleigh County for the county in which the appeal is taken at the same time the notice of appeal is filed with the commission. The notice of appeal must identify the order and the grounds of appeal, and reasonably specify that portion of the record which the appellant desires included in the transcript upon appeal. Immediately upon the filing of the notice of appeal the commission shall certify to the appellant the estimated cost of preparing the transcript of appeal of the proceedings upon which the order complained of was entered. The amount of the estimated cost must be deposited with the commission within ten days after the mailing of the certification of the costs to the

* NOTE: Section 38-08-14 was also amended by section 1 of Senate Bill No. 2180, chapter 426.

appellant. Upon the deposit of the costs the commission shall prepare and certify under its seal the transcript. The transcript shall be delivered to the district court of BarleIGH County for the county in which the appeal is taken within sixty days after the filing of the notice of appeal. A copy of the transcript shall be delivered to the appellant, or his designated attorney, upon deposit of the cost of preparing same with the commission. Fees charged and collected for the transcript of evidence may be paid to the person preparing such transcript.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 428

SENATE BILL NO. 2238
(Committee on Natural Resources)
(At the request of the Industrial Commission)

GAS ACTIVITY REGULATION

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to industrial commission authority to regulate the exploration, development, and production of carbon dioxide and nitrogen gas; and to amend and reenact section 38-12-02 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission to regulate carbon dioxide and nitrogen gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulation of carbon dioxide and nitrogen gas. The commission is hereby vested with the authority and duty to regulate the exploration, development, and production of carbon dioxide and nitrogen gas within the state, used for the development of oil and gas resources, in the same manner, insofar as is practicable, as it regulates oil or gas as defined in this chapter.

SECTION 2. AMENDMENT. Section 38-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-12-02. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The Subject to the provisions of section 1 of this Act, the state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the office of the state geologist has the authority:

1. To require:

- a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and regulations of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota.
- b. The delivery, free of charge, to the state geologist of the basic exploration data collected by the operator, within thirty days of field collection of such data. This data shall include:
 - (1) Sample cuts, core chips, or whole cores.
 - (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be requested by the state geologist.

The data so submitted shall be confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

- c. The filing of monthly production reports in the manner prescribed by the commission, and any other reports deemed necessary by the commission.
 - d. The conducting of all exploration, development, and production operations in such a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.
 - e. The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity.
2. To regulate the drilling, and abandonment of exploration test holes and producing wells and all other exploration, development, production, and reclamation operations.
 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.
 4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the state geologist or his representative shall have access to all exploration, development or production installations for purposes of inspection and shall have the authority to require the operator's aid if same is necessary and is requested.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 429

HOUSE BILL NO. 1461
(Representative Koland)
(Senator Bakewell)

GEOPHYSICAL EXPLORATION REQUIREMENTS

AN ACT to amend and reenact subsection 4 of section 38-08.1-03.1 and sections 38-08.1-04 and 38-08.1-04.1 of the North Dakota Century Code, relating to geophysical exploration bond requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 38-08.1-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter 10-22, a certificate of incorporation issued pursuant to chapter 10-19.1, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the industrial commission shall issue to the person desiring to engage in geophysical exploration or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process.

SECTION 2. AMENDMENT. Section 38-08.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-04. Filing of notice of intention Application for permit to engage in geophysical exploration. Any person desiring to engage in geophysical exploration within this state must, prior to actually engaging in such exploration, file a notice of intention an application for a permit to engage in geophysical exploration with the board of county eemission commissioners in each county in which exploration is to be carried on. The notice of intention shall include the name of the person who intends to explore, his address

or principal place of business, the name and address of the resident agent for the service of process on said person, the date upon which exploration will commence, the township, range, section, and quarter section in which the exploration is to be carried on, and the estimated depth of the drill hole, if any. Notices application for a permit for geophysical exploration must include the following information:

1. The name, address, and telephone number of the person intending to engage in geophysical exploration and the name and telephone number of any local representative who may be contacted by the board of county commissioners concerning geophysical exploration activities.
2. The name, address, and telephone number of any subcontractors, including drilling and plugging subcontractors, to be employed by the person intending to conduct geophysical exploration.
3. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
4. The date upon which geophysical exploration is to begin.
5. The approximate number and depth of any drill holes and the specific location of any drill holes or a description of the property on which the geophysical exploration is to be conducted described by township, range, section, and quarter section.
6. A certificate from the industrial commission indicating that the person intending to engage in geophysical exploration and any subcontractors to be employed by that person have each filed with the industrial commission a good and sufficient surety bond.
7. A fee to be determined by the board of county commissioners based on the anticipated actual expenses of administering and enforcing this chapter.

Applications filed with the board of county ~~commission~~ commissioners under this section shall be maintained in a manner separate and apart from any other records or indices concerning the land described in the ~~notice~~ application. The person making application for a geophysical exploration permit shall file an amended application whenever there is any new information or a change in the information contained in the application on file with the board of county commissioners.

SECTION 3. AMENDMENT. Section 38-08.1-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-04.1. Exploration permit.

1. Upon filing a notice of intention a complete application for permit to explore pursuant to section 38-08.1-04 and the certificate issued by the industrial commission pursuant to section 38-08-1-03-1, the board of county commission commissioners or its designee may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit" subject to such other conditions or restrictions as may be provided by county ordinances established pursuant to chapter 11-33. A person may not engage in geophysical exploration activities in any county without having first obtained a geophysical exploration permit from the board of county commission commissioners.
2. The permit shall show, at a minimum:
 - a. The name of the person.
 - b. The name and address of the resident agent for service of process.
 - c. That a notice of intention an application to engage in geophysical exploration has been duly filed.
 - d. That a good and sufficient surety bond has been filed by the person, naming the surety company and giving its address.
3. The permit shall must be signed by the chairman of the board of county commission commissioners or his that person's designee and shall must bear the official county seal. The permit is valid and effective for all geophysical crews of the permittee for a one-year period in which it is issued.
4. The cost of the permit shall be set by the county commission based on anticipated actual expenses of administering and enforcing provisions of this chapter, and the revenues realized therefrom shall go to the county so issuing.
- 5- The permit holder shall notify the operator of the land at least three days prior to the commencement of any geophysical exploration activity, unless waived by mutual agreement of both parties. The notice must include the approximate time schedule and the location of the planned activity.
- 6- 5. The permit or a photostatic copy thereof shall must be carried at all times by a member of the crew during the period of geophysical exploration and shall must be exhibited upon demand of the landowner or tenant operator or county or state official or respective surface owner.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 430

SENATE BILL NO. 2409
(Senators Krauter, Kelsh)
(Representatives Martin, O'Shea)

STATE AND PRIVATE MINERAL LEASE OFFERINGS

AN ACT to create and enact a new section to chapter 38-09 of the North Dakota Century Code, relating to public offering of state mineral leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sale of private mineral interests at public offerings for state mineral leases. The state or any of its departments and agencies when making a public offering for lease of state-owned mineral interests may allow private owners of mineral interests common to the state's mineral interests to offer their mineral interests at the public offering to be conducted by the state. The state-owned and privately owned mineral interests must be offered separately at the public offering. Privately owned mineral interests may only be offered when the common state-owned mineral interest is being offered. The private mineral owners shall submit a signed and notarized lease form to the state at the time they submit their minerals for inclusion in a public offering together with a current title opinion for the mineral interests certified by an attorney licensed to practice law in the state of North Dakota. The lease to be used by the private mineral owners must be on a form prescribed by the board of university and school lands in which the lease term, royalty rate, and rental rate are consistent with the state-owned mineral lease term and rates. The executed lease must be submitted to the leasing agency prior to the cutoff date for the public offering as established by the leasing agency. The private mineral interests must be advertised in the same manner as provided for in section 38-09-15. No bid may be accepted unless the bidder, at the time of the leasing, tenders or pays to the leasing official an amount equal to the bonus offered for the lease. The payment must be in the form of a thirty-day sight draft payable upon approval of title. The leasing official, in exchange for tender of the bonus, shall deliver to the successful bidder the executed lease. The leasing agency shall, as soon as practical after the sale, forward

the thirty-day draft to the private mineral owners. The person must agree to warrant and defend title to the mineral interest being offered for lease before being allowed to offer the mineral interest for sale under this section. When a person agrees to offer a mineral interest at a public offering that interest may not be withdrawn from the offering. A person offering a mineral interest at a public offering under this section shall agree to pay prior to sale an equitable share of the costs incurred by the state in making that public offering. Nothing in this Act shall be construed or interpreted to impose any liability or obligation upon the state or any of its departments, agencies, agents, or employees by reason of any acts or omissions done under this Act.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 431

SENATE BILL NO. 2073
(Legislative Council)
(Interim Oil and Gas Committee)

DRILLING OPERATIONS DEFINED

AN ACT to amend and reenact subsection 2 of section 38-11.1-03 of the North Dakota Century Code, relating to the definition of drilling operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 38-11.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Drilling operations" means the ~~exploration for, including seismograph activities, or~~ drilling of an oil and gas well and the production and completion operations ensuing from the drilling which requires require entry upon the surface estate and ~~was~~ which were commenced ~~subsequent to~~ after June 30, 1979, and ~~the production operations ensuing therefrom, provided, however, that this subsection is applicable only to~~ oil and gas geophysical and seismograph exploration activities commenced subsequent to after June 30, 1983.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 432

SENATE BILL NO. 2072
(Legislative Council)
(Interim Oil and Gas Committee)

SURFACE OWNER OIL AND GAS DAMAGES

AN ACT to amend and reenact subsection 7 of section 38-11.1-03 and section 38-11.1-04 of the North Dakota Century Code, relating to the definition of surface owner and surface damage payments with respect to oil and gas production damage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 38-11.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Surface owner" means ~~the any~~ person who has possession of holds record title to the surface of the land ~~either as an owner or as a tenant~~.

SECTION 2. AMENDMENT. Section 38-11.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11.1-04. Surface damage ~~Damage~~ and disruption payments. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages, consideration shall be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner shall be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section shall only cover land directly affected by drilling operations. Payments under this section are intended to compensate the ~~actual~~ surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 433

SENATE BILL NO. 2075
(Legislative Council)
(Interim Oil and Gas Committee)

DRILLING OPERATIONS INSPECTION AND NOTICE

AN ACT to create and enact a new section to chapter 38-11.1 of the North Dakota Century Code, relating to inspection of well sites; and to amend and reenact section 38-11.1-05 of the North Dakota Century Code, relating to information that must accompany the notice of oil and gas drilling operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspection of well site. Upon request of the surface owner or adjacent landowner, the state department of health shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the state department of health shall issue appropriate orders under chapter 23-25 to protect the health and safety of the surface owner's health, welfare, and property.

SECTION 2. AMENDMENT. Section 38-11.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11.1-05. Notice of drilling operations. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of such activities the operations, unless waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time prior to commencement of drilling operations. This notice shall must be given to the record surface owner at his that person's address as shown by the records of the county register of deeds at the time the notice is given. This notice shall must sufficiently disclose the plan of work and operations to enable the surface owner

to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice ~~shall~~ must be a form prepared by the state geologist advising the surface owner of ~~his~~ the surface owner's rights and options under the chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 434

SENATE BILL NO. 2304
(Senator Moore)
(Representative Whalen)

WATER SUPPLY DAMAGES

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to damages awarded by a court for a diminution in quantity or quality of a water supply; and to amend and reenact section 38-11.1-06 of the North Dakota Century Code, relating to the protection of water wells and surface and ground water sources from damage caused by oil and gas exploration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and certified water quality and a quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling

operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer shall be is also responsible for all damages to person or property, ~~real or personal~~, resulting from the lack of ordinary care by the mineral developer. The mineral developer shall also be responsible for all damages to person or property, ~~real or personal~~, or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

SECTION 2. A new section to chapter 61-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

If a court of competent jurisdiction determines that a water supply has been illegally diminished in quantity or quality and that a valid water right to use that supply has been damaged as a result of the diminishment, damages awarded to the owner of the water right shall be an amount to cover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the diminishment.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 435

SENATE BILL NO. 2185
(Committee on Natural Resources)
(At the request of the Governor)

SURFACE MINING AND RECLAMATION BONDS

AN ACT to amend and reenact subsection 12.1 of section 38-14.1-02 of the North Dakota Century Code, relating to bonds issued under the state surface mining and reclamation bond fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12.1 of section 38-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 12.1. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 436

SENATE BILL NO. 2236
(Committee on Natural Resources)
(At the request of the Public Service Commission)

RECLAMATION PERFORMANCE BONDS

AN ACT to amend and reenact subsections 2 and 7 of section 38-14.1-16 and subsection 7 of section 38-14.1-17 of the North Dakota Century Code, relating to minimum reclamation performance bond amounts, the substitution of surety, and the release of reclamation performance bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 7 of section 38-14.1-16 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. For areas where coal is mined and where overburden is removed or deposited, the amount of the bond shall be at a minimum one thousand five hundred dollars for each acre [-40 hectare] or portion thereof or an amount sufficient to assure the completion of The commission shall set the bond amount sufficient to complete the reclamation plan by the commission in the event of forfeiture, whichever is greater. For areas affected by all other activities conducted as part of a surface coal mining operation, the amount of the bond shall be at a minimum two hundred dollars for each acre [-40 hectare] or portion thereof or an amount sufficient to assure the completion of the reclamation plan by the commission in the event of forfeiture, whichever is greater. A bond that is greater than any minimum amount established by this subsection shall be required if the commission shall determine that the cost of reclamation exceeds such minimum amounts. In no case shall the The bond for the entire permit area must be less than at least ten thousand dollars.
7. If the corporate surety's license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter shall be is suspended or revoked, the permittee, within thirty days after receiving notice thereof from the commission, shall substitute for such

surety a good and sufficient corporate surety licensed to do business in North Dakota or security as prescribed by subsection 5 provide a substitute performance bond. Upon failure of if the permittee fails to make substitution of surety within thirty days, the commission shall have the right to may suspend the permit until such substitution has been made. If substitution is not made within ninety days, the commission shall suspend the permit.

SECTION 2. AMENDMENT. Subsection 7 of section 38-14.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The commission may release in whole or in part said bond or deposit if the commission is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule as follows:
 - a. When the permittee completes the backfilling, regrading, and drainage control of in a bonded area in accordance with the approved reclamation plan, the release of up to, forty percent of the bond or collateral for the applicable permit area may be released.
 - b. After spreading suitable plant growth material or other suitable strata on the regraded land in accordance with the approved reclamation plan, up to an additional, twenty percent of the bond or collateral for the applicable permit area may be released.
 - c. After vegetation has been is established on the regraded land in accordance with the approved reclamation plan, up to an additional twenty percent of the bond or collateral for the applicable permit area may be released. The commission shall retain that amount of sufficient bond for the revegetated area which would be sufficient for a to cover third party to cover the cost of reestablishing vegetation and revegetation and associated costs for the period specified for permittee responsibility in set by subsection 18 of section 38-14.1-24 of reestablishing vegetation, provided that:
 - (1) No part of the remaining bond or deposit shall be released under this subdivision so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of There may be no release under this subdivision until the requirements set by of subdivision b of subsection 8 of section 38-14.1-24 or until are

met and prime farmlands affected by surface coal mining operations have been are returned to a level of productivity equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices.

- (2) Where a silt dam is to be retained as a If there is a permanent silt dam impoundment pursuant to under subsection 7 of section 38-14.1-24, the portion of the remaining bond or deposit may be released under this subdivision so long as provisions for sound if the commission approves the commitments for future maintenance by the permittee or the landowner have been made with the commission.
- d. When the permittee has successfully completed successfully all surface coal mining and reclamation operations, and after the period set by subsection 18 of section 38-14.1-24, the remaining portion of the bond may be released, but not before the expiration of the period specified for permittee responsibility in subsection 18 of section 38-14.1-24. No bond shall be fully released until all reclamation requirements of this chapter are fully met.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 437

SENATE BILL NO. 2184
(Committee on Natural Resources)
(At the request of the Governor)

SURFACE MINING AND RECLAMATION BOND FUND

AN ACT to establish a state surface mining and reclamation bond fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. In this chapter:

1. "Bond" means a bond required of a permittee under chapter 38-14.1.
2. "Fund" means the surface coal mining and reclamation bond fund.
3. "Permit" means a surface coal mining and reclamation operation permit approved by the public service commission under chapter 38-14.1.
4. "Permittee" means a person holding a permit.

SECTION 2. Surface coal mining and reclamation bond fund. The industrial commission may establish a surface coal mining and reclamation bond fund to be maintained at the Bank of North Dakota. All moneys collected and received under this Act are appropriated to the commission for the purposes provided for in this Act.

SECTION 3. Bond coverage available to permittees. The fund may provide bonds for the faithful performance of all surface coal mining laws, rules, and permit terms and conditions. An application for a bond may be made to the industrial commission, which shall approve or disapprove the application. The decision of the industrial commission may not be appealed. The industrial commission may establish conditions, require information and such guarantee and indemnity by the permittee as the industrial commission deems necessary for the preservation of the fund.

SECTION 4. Investment of fund. Investment of the fund is under the supervision of the Bank of North Dakota.

SECTION 5. Commission may employ staff. The industrial commission may employ staff and enter into public and private contracts as may be necessary to operate the fund. The salaries of employees and other expenditures for the operation of the fund must be paid out of the fund.

SECTION 6. Premiums - Amount and to whom paid. The premium for a bond under this Act must be set by the industrial commission. Premiums must be paid in advance to the industrial commission and deposited in the fund.

SECTION 7. Reinsurance contracts - Revenue bonds - Guarantees. The industrial commission shall do all things necessary to preserve the fund and ensure the ability of the fund to pay claims. The industrial commission is granted all powers necessary to effectuate the purposes of this Act, including but not limited to the power to:

1. Contract for reinsurance of any risk against which a bond is issued under this Act. A contract for reinsurance may be entered into without public bids and must be approved by the commissioner of insurance.
2. Issue evidences of indebtedness. The principal of, and interest on, evidences of indebtedness may be paid only from the fund. The evidences of indebtedness are not a debt of the state of North Dakota or of any officer or agent of the state within the meaning of any statutory or constitutional provision and shall contain a statement to that effect on their face. The evidences of indebtedness may be sold at public or private sale and must contain the terms and provisions set by the industrial commission. Any state department or public fund may invest its funds in the purchase of the evidences of indebtedness. The evidences of indebtedness are not subject to taxation by the state or by any political subdivision of the state.
3. Require, before issuing a bond, that a permittee guarantee and indemnify the fund against any loss and secure the guarantee and indemnity by the pledge or posting of real or personal property under terms and conditions set by the industrial commission. The industrial commission may not require the pledge or posting of property if the fund's reserves are sufficient to ensure the payment of all claims against it. The liability of a permittee under a guarantee or indemnity agreement under this Act is limited to the payment of any claims against the bond issued for the permittee.

SECTION 8. Claims - How paid. All claims against bonds provided for by this Act must be paid out of the fund in an amount not exceeding the face amount of the bond.

SECTION 9. Industrial commission may adopt rules. The industrial commission may adopt rules necessary to carry out this Act.

Approved April 1, 1987
Filed April 2, 1987

MOTOR VEHICLES

CHAPTER 438

SENATE BILL NO. 2481
(Kelly, Tennesfos)

EMERGENCY VEHICLES

AN ACT to amend and reenact subdivision c of subsection 1 of section 39-01-01 and section 39-10-03.2 of the North Dakota Century Code, relating to operation of certain emergency motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 39-01-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

c. Class C authorized emergency vehicles means ~~these vehicles:~~

- (1) Vehicles authorized by state and local disaster emergency services organizations ~~and these vehicles.~~
- (2) Vehicles used by volunteer firemen while performing their assigned disaster and emergency responsibilities.
- (3) Vehicles, other than ambulances, used by emergency medical services personnel.

SECTION 2. AMENDMENT. Section 39-10-03.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10-03.2. **Class C authorized emergency vehicles.** All class B specifications apply to class C authorized emergency vehicles except that a rotating blue flashing light shall be displayed in place of an amber light as provided in section 39-10-03.1. The With respect to vehicles used by state and local disaster emergency services personnel, the division of disaster emergency services shall be management is responsible for promulgating the adopting rules for the use of flashing blue lights in accordance with chapter 28-32.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 439

SENATE BILL NO. 2142
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE TITLE DEFINITIONS

AN ACT to create and enact six new subsections to section 39-01-01 of the North Dakota Century Code, relating to motor vehicle definitions; and to repeal sections 39-04-01 and 39-22-01 of the North Dakota Century Code, relating to motor vehicle definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Six new subsections to section 39-01-01 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Essential parts" includes all integral parts and body parts the removal, alteration, or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

"Foreign vehicle" means every motor vehicle which is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.

"Reconstructed vehicle" means any vehicle, of a type required to be registered, materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.

"Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway.

"Specially constructed vehicle" means any vehicle which was not constructed originally under the distinct name, make, model, or type by a generally recognized manufacturer of vehicles.

"Travel trailer" means a mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.

SECTION 2. REPEAL. Section 39-22-01 of the North Dakota Century Code, and section 39-04-01 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 440

SENATE BILL NO. 2270
(Committee on Transportation)
(At the request of the Highway Department)

OPERATOR'S LICENSE FEES

AN ACT to create and enact a new section to chapter 39-06 of the North Dakota Century Code, relating to motor vehicle operator's license examination fees; to amend and reenact section 39-01-11, subsections 1, 3, 6, and 9 of section 39-06-03.1, subsections 1 and 7 of section 39-06-14, sections 39-06-18 and 39-06-19 of the North Dakota Century Code, relating to various fees paid to the highway commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-11. Nonresident motor vehicle user - Service upon. The use and operation by a resident of this state or his agent, or by a nonresident or his agent, of a motor vehicle upon or over the highways of this state shall be deemed an appointment by such resident when he has been absent from this state continuously for six months or more following an accident or by such nonresident at any time, of the highway commissioner of this state to be his true and lawful attorney upon whom may be served all legal process in any action or proceeding against him growing out of the use or operation of the motor vehicle resulting in damages or loss to person or property, whether the damage or loss occurs upon a public highway or upon public or private property, and such use or operation shall constitute an agreement that any such process in any action against him which is so served shall have the same legal force and effect as if served upon him personally, or, in case of his death, that such process shall have the same legal force and effect as if served upon the administrator of his estate. Service of the summons in such case may be made by delivering a copy thereof to the commissioner together with a fee of ~~two~~ ten dollars.

* SECTION 2. AMENDMENT. Subsections 1, 3, 6, and 9 of section 39-06-03.1 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

* NOTE: Subsections 1 and 9 of section 39-06-03.1 were also amended by section 1 of Senate Bill No. 2093, chapter 457.

1. The commissioner shall issue upon request a nondriver color photo identification card to any person, of the age of ~~sixteen~~ fourteen years or over, fulfilling the requirements of this section.
3. The fee shall be ~~three~~ eight dollars. Fees collected pursuant to this section shall be paid monthly into the highway fund in the state treasury.
6. The commissioner is hereby authorized to utilize whatever advertising ~~he deems~~ deemed necessary to make the public aware of the card and its use.
9. A duplicate card may be obtained by making an application and paying a ~~three~~ eight dollar fee.

SECTION 3. A new section to chapter 39-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Fee for examination of applicants.

1. Every applicant for an operator's license who is required to be tested to determine the applicant's knowledge of highway signs, regulating, warning, and directing traffic and of the traffic laws of this state shall pay a fee of five dollars.
2. Every applicant for an operator's license who is required to be tested to demonstrate applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall pay a fee of five dollars.

* SECTION 4. AMENDMENT. Subsections 1 and 7 of section 39-06-14 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The commissioner shall, upon payment of ~~an eight a ten~~ dollar fee, issue to every qualified applicant ~~qualifying therefor~~ an operator's license as applied for in the form prescribed by the commissioner. The license shall bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature. If requested on the license application, the license issued by the commissioner shall identify the licensee as a donor under the provisions of chapter 23-06.1. No license shall be valid until it has been so signed by the licensee. For purposes of verification, an officer may require the licensee to write his signature in the presence of such officer. The commissioner shall have the authority to promulgate rules and regulations, pursuant to chapter 28-32, relating to

* NOTE: Section 39-06-14 was also amended by section 2 of Senate Bill No. 2093, chapter 457.

the manner in which photographs are to be obtained and placed on operator's licenses.

7. The commissioner may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee of ~~eight~~ ten dollars and take a written examination of the applicant's knowledge of traffic laws and general rules of the road. If the applicant passes the written examination and the commissioner is satisfied that the applicant has adequate eyesight, the commissioner may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an instructor's permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

SECTION 5. AMENDMENT. Section 39-06-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-18. Duplicate certificates. In the event that a permit or license issued under the provisions of this chapter is lost, mutilated, or destroyed, or contains erroneous information due to a change in name, address, or for any other reason, the person to whom the same was issued may obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the commissioner that such permit or license has been lost, mutilated, or destroyed, or is erroneous, and upon payment of a ~~three~~ eight dollar fee.

*** SECTION 6. AMENDMENT.** Section 39-06-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-19. Expiration of license - Renewal. Every operator's license issued under this chapter shall expire and be renewed according to this section. The expiration date of operator's license for every person whose year of birth occurred in a year ending in an odd numeral shall be twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of operator's license for every person whose year of birth occurred in a year ending in an even numeral shall be twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. Application with fee for renewal of license shall be presented to the commissioner not prior to ten months before the expiration date of the operator's license. The commissioner may require an examination of an applicant as upon an original application. Every application for renewal of a license by an applicant shall be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of

*** NOTE:** Section 39-06-19 was also amended by section 3 of Senate Bill No. 2093, chapter 457.

the applicant. The commissioner shall provide visual examination equipment at each location where a license may be renewed. Am The initial application for a motor vehicle operator's license from an applicant applying for first license under the age of twenty-one may be accompanied by a certificate statement of examination from a licensed physician or an optometrist, licensed in this or another state, containing a statement as to stating the corrected and uncorrected vision of the applicant, in lieu of the eye department examination conducted by the driver licensing authorities. No certificate of. Such examination shall be dated more than within six months prior to the date of the driver license application. Every person submitting an application and fee for renewal of license one year or more after the expiration of a license, except an applicant whose military, or merchant marine service has terminated less than sixty thirty days prior to such application, shall be treated as a new driver and subject to the examination as upon an original application. The fee for every operator's license shall be eight ten dollars.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 441

SENATE BILL NO. 2542

(J. Meyer, Mathern)

(Approved by the Committee on Delayed Bills)

MOBILITY IMPAIRED PARKING PRIVILEGES

AN ACT to amend and reenact section 39-01-15 of the North Dakota Century Code, relating to parking privileges for mobility impaired persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-01-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-15. Parking privileges for physically handicapped mobility impaired - Certificate - Revocation - Penalty.

1. Any physically handicapped mobility impaired person who displays prominently upon an automobile parked by ~~him~~ that person or under ~~his~~ that person's direction and for ~~his~~ that person's use, the distinguishing certificate or insignia specified in subsection 3 ~~shall be~~ 4 is entitled to courtesy in the parking of ~~such~~ the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such handicapped impaired persons ~~shall do not~~ apply on streets or highways where and during such times as parking is prohibited.
2. Physically handicapped Mobility impaired as used in this section ~~shall include~~ includes any person who has sustained an amputation or material disability of either or both legs, or who has been otherwise ~~disabled~~ impaired in any manner rendering it difficult and burdensome for ~~him~~ that person to walk.
3. The registrar shall appoint a three-member committee. The committee must include two mobility impaired persons and

- one qualified physician. The terms of membership on the committee are three years, staggered so that one member is appointed each year. The initial membership of the committee must be appointed to terms of up to three years to provide for the initial staggering of terms under this subsection. The committee shall develop guidelines for qualification for and issuance of a special identifying certificate or insignia for use in this state.
4. The registrar of motor vehicles shall issue without charge, for a fee of two dollars per year or part of a year, a special identifying certificate or insignia for a marked motor vehicle to any physically handicapped mobility impaired applicant upon submission by the applicant of a completed application and a certificate issued by a qualified physician to the registrar that he the applicant is a physically handicapped mobility impaired person within the meaning of subsection 2. The application must include the information required by the committee. The physician must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate or insignia is valid for a period determined by the registrar. The registrar shall determine the form and size of the certificate or insignia and shall promulgate adopt rules and regulations governing the issuance thereof of the certificate or insignia. Of each fee for issuance of a certificate or insignia under this section, one dollar must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate or insignia. The rest of the fee must be deposited in the general fund for use, subject to legislative appropriation, by the committee on employment of the handicapped of the governor's council on human resources for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate was issued is entitled to a replacement certificate. The person shall furnish proof satisfactory to the registrar that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
5. An applicant may appeal a decision denying issuance of the certificate or insignia to the registrar of motor vehicles. Written notice of the appeal must be received within ten business days following receipt by the applicant of notice of denial. The applicant has sixty days to provide additional supportive material to the registrar for purposes of deciding the appeal. The registrar shall affirm or reverse the decision to deny issuance of the certificate or insignia within thirty days after receipt of the supportive material. Written notice of the decision must be given to the applicant.

- 4- 6. If the police of any municipality or any other political subdivision shall find that such certificate or insignia is being improperly used, they may report to the registrar of motor vehicles any such violation and the registrar may, in his discretion, remove the privilege. Any person who is not physically handicapped mobility impaired and who exercises the privileges granted a physically handicapped mobility impaired person under subsection 1 shall be guilty of an infraction.
- 5- 7. Whenever any public or private agency or authority designates parking spaces for use by motor vehicles operated by physically handicapped mobility impaired persons, those reserved spaces shall be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the space reserved shall also be indicated by signs or other suitable means. For particular events, a public or a private agency may reserve additional parking spaces for use by motor vehicles operated by mobility impaired persons. In that case, the temporarily reserved spaces must be indicated by signs or other suitable means. The law enforcement agency of any city or any other political subdivision may enforce the provisions of this subsection in any parking lot or parking facility that is generally open to the public, whether publicly or privately owned.
- 6- 8. No person may stop, stand, or park any vehicle in any designated parking space which is reserved for the physically handicapped mobility impaired on any state charitable or penal institution property or on the state capitol grounds unless the vehicle displays a physically handicapped mobility impaired identification certificate or insignia issued by the registrar of motor vehicle registrar vehicles to a physically handicapped mobility impaired person.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 442

HOUSE BILL NO. 1100
(Committee on Transportation)
(At the request of the Highway Department)

HIGHWAY DEPARTMENT OATHS AND RECORDS

AN ACT to create and enact a new section to chapter 39-01 of the North Dakota Century Code, relating to the administration of oaths and the admissibility of certified copies in matters pertaining to driver's license proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authority to administer oaths and certify copies of records - Admissibility of records.

1. Officers and employees of the department designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and must do so without fee.
2. A certified copy of any record maintained by the commissioner relative to title 39 is admissible in any judicial proceedings or administrative hearing in the same manner as the original of the record.
3. In response to a subpoena, or upon the request of any appropriate government or judicial official, the commissioner shall provide a duly certified copy of any book, paper, entry, record, or other document of that agency. This certified copy may consist of a photocopy or computer printout of the requested document certified by the commissioner or a duly authorized representative.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 443

HOUSE BILL NO. 1121
(Committee on Transportation)
(At the request of the Highway Patrol)

HIGHWAY PATROL INSPECTIONS AND RULES

AN ACT to create and enact a new subsection to section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol; and to amend and reenact section 39-21-46 of the North Dakota Century Code, relating to brake and equipment requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-03-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

To require a motor carrier owner, or a motor carrier's agent, affected by rules adopted under chapter 39-21 to produce logs or other documents to determine compliance with rules adopted under chapter 39-21.

SECTION 2. AMENDMENT. Section 39-21-46 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-46. Scope and effect of equipment requirements - Penalty.

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows to be in such unsafe condition as to endanger any person, or which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter. Any person who violates any of the provisions of section 39-21-08, 39-21-09, 39-21-10, or 39-21-14 shall be assessed a fee of ten dollars. Any person who, in

violation of this chapter, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.

2. The superintendent of the state highway patrol shall, under chapter 28-32, adopt necessary rules concerning the safe operation of motor vehicles and when and how motor carrier audits or inspections will be conducted. The rules must duplicate or be consistent with current motor carrier safety regulations of the United States department of transportation. The superintendent of the state highway patrol may adopt the motor carrier safety regulations by reference, and any adoption must be construed to incorporate amendments as may be made from time to time. Any proceeding under this section for issuing or modifying rules and determining compliance with rules of the superintendent of the state highway patrol must be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.
3. Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.
- 3- 4. The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as specifically made applicable.
- 4- 5. The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles, except as specifically made applicable.
- 5- 6. The provisions of this chapter and regulations of the department shall not apply to vehicles moved solely by human power, except as specifically made applicable.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 444

HOUSE BILL NO. 1559
(Committee on State and Federal Government)

HIGHWAY PATROLMEN'S RETIREMENT

AN ACT to create and enact a new section to chapter 39-03.1 of the North Dakota Century Code, relating to termination refunds of highway patrolmen and repurchase of prior service credit under the highway patrolmen's retirement system; to amend and reenact sections 39-03.1-01, 39-03.1-05, 39-03.1-07, subsection 1 of section 39-03.1-09, 39-03.1-11, and 39-03.1-18 of the North Dakota Century Code, relating to certain definitions, deposit of moneys, contributions, calculation of benefits, and compulsory retirement under the highway patrolmen's retirement system; to repeal sections 39-03.1-08, 39-03.1-12, 39-03.1-13, 39-03.1-14, 39-03.1-17, and 39-03.1-21 of the North Dakota Century Code, relating to service allowances, retirement allowances, optional retirement allowances, severance allowances, and death benefits under the highway patrolmen's retirement system; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-01. Definitions. The following words and phrases as used in In this chapter, unless a different meaning is plainly implied by the context, shall have the following meanings or subject matter otherwise requires:

1. "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his the contributor's credit in the fund, together with the regular and interest thereon credited on those amounts at a rate established by the board.
2. "Board" means the North Dakota public employees retirement board.

3. "Contributor" means any person who is a member of the North Dakota highway patrol, is subject to salary deductions to support the fund, and is employed on or after July 1, 1981.
4. "Fund" means the North Dakota highway patrolmen's retirement fund.
5. "Patrol" means the North Dakota highway patrol.
6. "Regular interest" means the interest credited on the contributor's contribution in the amount of four percent per annum. "Salary" means the actual dollar compensation, excluding any bonus or overtime, paid to or for a contributor for the contributor's services.
7. "Surviving spouse" means that person lawfully married to the contributor at the time of the contributor's death.

SECTION 2. AMENDMENT. Section 39-03.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-05. Payments into the North Dakota highway patrolmen's retirement fund Deposit of contributions - Appropriation. All appropriations made by the state of North Dakota, all contributions by members of the North Dakota highway patrol, in the amount hereinafter specified, and all interest on the increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the North Dakota highway patrolmen's retirement fund moneys of the fund, including employers' contributions, contributor's contributions, grants, donations, legacies, and devises for the benefit of the fund, must be deposited in the public employees retirement fund account with the Bank of North Dakota. All of these moneys, not otherwise appropriated, are appropriated for the purpose of making investments for the fund and to make payments to beneficiaries under the program.

SECTION 3. AMENDMENT. Section 39-03.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-07. Membership. Every Except as otherwise provided, each member of the North Dakota highway patrol, including the superintendent and assistant superintendent, shall be required to contribute to the retirement system established by this chapter, provided, that personnel fund, and is eligible to nominate and vote for members of the board. Personnel of the truck regulatory division of the state highway department transferred to the highway patrol after July 1, 1983, shall are not be members of the retirement system established by this chapter but, instead, shall remain required to contribute to the fund. They are members of the public employees retirement system and social security system.

Contributions by members under this chapter shall commence with the first payroll after July 1, 1949. If any person who becomes a member of the North Dakota highway patrol subsequent to July 1, 1949, shall have been at any time theretofore a member of the North Dakota highway patrol, he shall receive credit for any such service prior to July 1, 1949, upon complying with the provisions of this chapter.

SECTION 4. AMENDMENT. Subsection 1 of section 39-03.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund a sum equal to ten and thirty-hundredths percent of the member's monthly salary, which sum shall must be deducted from the member's salary and credited to the member's account in the fund. A contributor who was paid a refund or severance allowance upon a termination of employment with the patrol and who again becomes a contributor may, at any time prior to retirement, elect to return to the fund the amount which was paid the contributor as a refund or severance allowance plus regular interest thereon for the period during which the amount was withdrawn from the fund. All such payments must be made in full before a retirement or optional retirement allowance is granted, and, if the contributor elects to make such payment, any survivor's allowance to which the contributor's survivor would otherwise be entitled shall be reduced by an amount and for such time as will assure that the back payments will be returned to the fund. Every contributor who elects to make such back payments shall receive full credit under this chapter for all contributions made into the fund and for all service credits to which the contributor might thereby be entitled.

SECTION 5. A new section to chapter 39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refund and repurchase of contributions. A contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable on application of the contributor, or automatically in January of the following calendar year.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the

contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.

2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase months of service lost to the date of refund. The election to repurchase must be made within ninety days of reemployment and repayment must begin within twelve months of reemployment. The repayment may be made in a lump sum or by periodic payments that each year include at least ten percent of the repayment principal amount. The board shall establish an interest rate to be charged on periodic payments. If the contributor's death occurs before completion of the repurchase, the contributor's spouse may, within ninety days of the contributor's death, complete the repurchase. Benefits payable to the surviving spouse cannot be paid until the repurchase has been completed.

SECTION 6. AMENDMENT. Section 39-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-11. Retirement benefit. Each contributor whose employment with the patrol has been terminated and has at least twenty-five years accumulated deductions may, after reaching the age of fifty-five years, may apply to the board for the retirement allowance provided in section 39-03.1-12 retirement benefits according to this section and rules adopted by the board consistent with this chapter. The following procedures apply:

1. A contributor is entitled to credit for permanent employment or its equivalent from the date eligibility is attained until normal or postponed retirement date, as described in subsection 3.
2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six consecutive months employed during the last one hundred twenty months of employment. Months not employed or months in which employment was not as a permanent employee are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.
3. Retirement dates are as follows:
 - a. Early retirement date is the first day of the month next following the month in which the contributor

retirement, the contributor or the contributor's designated beneficiary is entitled to the contributor's accumulated deductions at termination.

8. If a contributor who is receiving retirement benefits, or a contributor's surviving spouse who is receiving retirement benefits, dies before the total amount of benefits paid to them equals the amount of the contributor's accumulated deductions at retirement, the difference must be paid to that spouse's estate, to the surviving beneficiary, or to the contributor's estate.
9. The board shall adopt rules providing for the receipt of retirement benefits in the following forms:
 - a. A lifetime monthly pension; and
 - b. A joint survivor benefit payable monthly of fifty percent of the deceased contributor's accrued normal retirement benefits payable until the joint survivor dies.

SECTION 7. AMENDMENT. Section 39-03.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-18. Compulsory termination of employment. Except as provided in this section, whenever any A contributor shall reach who is at least the age of sixty years, his may not continue employment with the patrol. The superintendent shall be terminated forthwith. If such contributor has at least twenty-five years accumulated deductions he shall be entitled to receive from the fund, without application therefor, the monthly retirement allowance provided for in section 39-03.1-12. If such contributor has at least fifteen years but less than twenty-five years accumulated deductions he shall be entitled to receive from the fund, without application therefor, the monthly optional retirement allowance provided for in section 39-03.1-14. If such contributor has less than fifteen years accumulated deductions, he shall be entitled to receive from the fund, without application therefor, the severance allowance provided for in section 39-03.1-17, except that a contributor who was a member of the North Dakota highway patrol January 1, 1959, shall have the following option-

A contributor who shall have reached compulsory retirement age with less than twenty years service and who has terminated his employment with the patrol shall be eligible for a monthly retirement equal to that portion of the retirement benefits under section 39-03.1-14 as his total accumulations may bear to what the accumulations would have been had he completed twenty years service at the time of his retirement terminate the employment of such a member. The termination is effective no later than the member's sixtieth birthday.

SECTION 8. REPEAL. Sections 39-03.1-08, 39-03.1-13, and 39-03.1-17 of the North Dakota Century Code, and sections 39-03.1-12, 39-03.1-14, and 39-03.1-21 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

- attains the age of fifty years and has completed at least ten years of eligible employment.
- b. Normal retirement date is the first day of the month next following the month in which the contributor attains the age of fifty-five years and has completed at least ten years of eligible employment.
- c. Postponed retirement date is the first day of the month next following the month in which the contributor attains the age of sixty years.
4. The board shall calculate retirement benefits as follows:
- a. Normal retirement benefits for all retirees reaching the normal retirement date are payable monthly, and are:
- (1) The first twenty-five years of credited service multiplied by two and one-half percent of final average salary.
- (2) All years in excess of twenty-five years of credited service multiplied by one and one-half percent of final average salary.
- b. Early retirement benefits are normal retirement benefits accrued to the date of termination of employment, but actuarially reduced to account for benefit payments beginning before the normal retirement date.
- c. Postponed retirement benefits, for all retirees reaching the postponed retirement date, are calculated in the same manner as normal retirement benefits.
5. On termination of employment after completing ten years of eligible employment but before the normal retirement date, a contributor who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits. The deferred benefits are payable beginning on the contributor's normal retirement date and are one hundred percent of the contributor's normal retirement benefits.
6. If a contributor dies after completing ten years of eligible employment, the surviving spouse of the contributor, after reaching the age of fifty-five, is entitled to a monthly retirement benefit of fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.
7. If a contributor not eligible for the benefits of subsection 6 terminates employment for any reason before

CHAPTER 445**HOUSE BILL NO. 1597
(Dorso)****SEMITRAILER COMPLIANCE WITH HAZARDOUS
MATERIALS RULES**

AN ACT to create and enact a new subsection to section 39-04-02 of the North Dakota Century Code, relating to disclosure of certain information concerning registration of motor vehicle trailers; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. A new subsection to section 39-04-02 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

If the registration is for a semitrailer tank designated as MC306, MC307, MC312, MC330, MC331, or MC338, the applicant must show, upon request by an officer of the highway patrol, the status of compliance with hazardous material rules of the United States department of transportation or of this state. Violation of this subsection is punishable by a fine of one hundred dollars.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 446

SENATE BILL NO. 2138
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE RECORD RETENTION

AN ACT to amend and reenact section 39-04-04 of the North Dakota Century Code, relating to retention of motor vehicle department records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-04. Register of applicants to be kept by the department - Destruction of application. The department shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled thereto, shall register the described vehicle and the owner in books or electronic data processing files or on index cards or film as follows:

1. Under a distinctive registration number assigned to the vehicle and its owner, referred to in this chapter as the registration number.
2. Alphabetically under the name of the owner.
3. Numerically by the serial or identification number of the vehicle.
4. In the discretion of the department, in any other manner it may deem desirable.

The application may be destroyed by the department after it is two years old.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 447

SENATE BILL NO. 2140
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE REGISTRATION REFUSAL

AN ACT to amend and reenact section 39-04-05 of the North Dakota Century Code, relating to grounds for refusing registration of a motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-05. Grounds for refusing registration. The department shall refuse registration or any transfer of registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration of the vehicle under this chapter.
2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.
3. That the department has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration would constitute a fraud against the rightful owner or other person having valid lien upon the vehicle.
4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.
5. That the required fee has not been paid.

6. When any sales tax or motor vehicle excise tax, properly due, has not been paid.
7. For failure to maintain security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance on a motor vehicle as required by chapter 26.1-41.
8. For failure to provide proof of payment of the heavy vehicle use tax due, as required, to the internal revenue service.

The registrar of motor vehicles shall promulgate rules and regulations for refusal of registration of vehicles not equipped as required by chapter 39-21.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 448

HOUSE BILL NO. 1410
(Representatives Opedahl, Rydell)
(Senators Mushik, Holmberg)

COMMEMORATIVE CENTENNIAL LICENSE PLATES

AN ACT to amend and reenact section 1 of chapter 421 of the 1985 Session Laws of North Dakota, relating to the issuance of commemorative centennial license plates; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1 of chapter 421 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 1. Issuance of commemorative centennial license plates - Temporary authority to use one license plate. The North Dakota centennial commission, created by chapter 583 of the 1983 Session Laws of North Dakota, may issue commemorative centennial license plates for the years 1987, 1988, and 1989. The commission may make an agreement with the motor vehicle registrar for procurement of the commemorative license plates. The commission may sell the commemorative license plates at a price that does not exceed ten dollars each. During 1987, 1988, and 1989, the operator of a motor vehicle, as defined in section 39-01-01, may display a commemorative centennial license plate issued by the centennial commission on the front of that motor vehicle, in lieu of the distinctive license plate assigned under chapter 39-04. A rear license plate issued under chapter 39-04 must still be displayed.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 449

SENATE BILL NO. 2141
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

PENITENTIARY LICENSE PLATE MANUFACTURING

AN ACT to limit the authority of the state penitentiary to acquire license plate manufacturing equipment; and to amend and reenact section 39-04-09 of the North Dakota Century Code, relating to acquisition of license plates from the state penitentiary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-09. Registrar may design and issue number plates. The registrar may design and issue plates of distinctly different color for each classification of motor vehicle, and there shall at all times be a marked contrast between the background color of the plates and that of the numerals and letters thereon. License plates must be acquired from the North Dakota state penitentiary if the penitentiary has the facilities to manufacture license plates.

SECTION 2. LIMITATION ON AUTHORITY OF STATE PENITENTIARY TO ACQUIRE LICENSE PLATE MANUFACTURING EQUIPMENT. The state penitentiary may not acquire license plate manufacturing equipment to provide services under section 1 of this Act until the first general issuance of license plates after 1987.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 450

SENATE BILL NO. 2430
(Lashkowitz)

POW LICENSE PLATES

AN ACT to amend and reenact section 39-04-10.5 of the North Dakota Century Code, relating to transfer and retirement of POW number plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-10.5 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.5. Retirement of POW plates - Transfer to certain surviving spouses - Retirement. On the death of a prisoner of war to whom was issued a special number plate under subdivision o of subsection 2 of section 39-04-18, the registrar shall comply with this section. If the deceased prisoner of war was survived by a spouse, the registrar shall transfer the number plate to that spouse's name, and the spouse may retain the number plate as an active plate. If the surviving spouse remarries, then within thirty days of that remarriage, the surviving spouse shall surrender the plate to the registrar. On receipt of a surrendered plate, on the death of the surviving spouse, or if the deceased prisoner of war had no surviving spouse, the registrar shall retire the number used on that the number plate. On retirement of a number plate and at the request of the survivors of the deceased prisoner of war, the registrar shall issue to the survivors one commemorative plaque resembling the number plate that had been issued to the prisoner of war.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 451

SENATE BILL NO. 2139
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE REGISTRATION DELINQUENCY

AN ACT to amend and reenact section 39-04-15 of the North Dakota Century Code, relating to when motor vehicle registrations become due and delinquent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-15. When registration fees become due and delinquent. The registration fee for a motor vehicle shall ~~become~~ becomes due as soon as ~~such~~ the vehicle ~~first~~ is used upon the highways of this state and, ~~except as otherwise provided in this chapter, upon January first in each year thereafter.~~ The annual registration fee shall be paid upon transfer of ownership in the vehicle and in any event on or before February first, and shall be delinquent after February first unless paid. ~~Except as otherwise provided in this chapter, license fees falling due between January second and December thirty-first shall become delinquent upon the expiration of ten days after the same becomes due, except that the registration fee for a passenger motor vehicle shall become due as soon as such vehicle first is used upon the highways of this state and, except as otherwise provided in this chapter, upon April first in each year thereafter.~~ The annual registration fee shall be paid upon transfer of ownership in the vehicle and in any event on or before April first, and shall be delinquent after May first unless paid. ~~Except as otherwise provided in the chapter, license fees falling due between April second and March thirty-first shall become delinquent upon the expiration of ten days after the same becomes due.~~ The registration for a vehicle becomes delinquent immediately upon expiration of the prior registration.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 452

SENATE BILL NO. 2279
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE REGISTRATION EXEMPTIONS

AN ACT to amend and reenact subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to exemptions from motor vehicle registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-04-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The following motor vehicles may be operated upon the highways, roads, and streets of this state without being registered, under such limitations as are herein specified; provided, however, that whenever the ~~commissioner~~ department determines that it is to the best interest of the state of North Dakota and determines by reciprocal agreement or otherwise that as great or greater privileges are not granted North Dakota residents while traveling in other states or territories, the ~~commissioner~~ department may cancel or limit the application of any exception to residents or motor vehicles from such other state or territory:
 - a. Farm tractors as defined in section 39-01-01, special mobile equipment and road rollers and other road construction or maintenance machinery that cannot be operated on the highways and streets of this state in a normal operating manner.
 - b. Motor vehicles owned by or in possession of Indian mission schools or by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction; provided, however, that the vehicles shall display license plates provided by the motor vehicle department at actual cost.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate bearing a decal with the words "driver education" appearing on it. The license plates shall be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

No person shall use a motor vehicle bearing official license plates bearing a decal with the words "driver education" appearing on it as provided for in this subdivision for any purpose other than driver education course instruction. No person is in violation of this subdivision if he is required by the dealer or a school administrator to house or otherwise protect the vehicle at his home or other facility.

- c. Motor vehicles registered in any other state or territory when coming into this state a distance not exceeding twenty miles [32.19 kilometers]; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state for any purpose and are not gainfully employed or stationed in this state. Nor shall such vehicles be required to pay any other tax, and no registration fee or tax shall be required when such vehicles do not leave the incorporated limits of any city while in the state of North Dakota within a zone circumscribed by a line running parallel to the corporate limits of any city or contiguous cities and twenty miles [32.19 kilometers] distant therefrom. This section does not prevent trucks from coming into the state such distance as shall be necessary to reach the nearest railway shipping station.
- d. Motor vehicles owned and operated by the United States government, or any foreign government, or any of their agencies or departments; provided, however, that such motor vehicles shall display identification plates.
- e. Passenger motor vehicles registered in any other state or territory; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state for any purpose and are not gainfully employed or stationed in this state.

- f. Motor vehicles owned and operated by a manufacturer of motor vehicles when such motor vehicles are operated or moved such distance as may be authorized by the registrar of motor vehicles from the factory where manufactured or assembled, to a depot or place of shipment, or other point of delivery; provided, however, that such vehicles have displayed in plain sight the name and address of the manufacturer and a written permit from local police authorities.
- g. Motor vehicles owned and operated by a licensed North Dakota motor vehicle dealer from a railway depot, warehouse, salesroom, or place of shipment; provided, however, that such vehicles have displayed in plain sight the name and address of the dealer and a written permit from the local police authorities.
- h. Motor vehicles owned and operated by nonresidents engaged in harvest of agricultural products from July fifteenth through December thirty-first of any one year; provided, however, that such motor vehicles have displayed thereon a decal or other means of identification issued by the registrar of motor vehicles upon payment of a fee of fifty dollars.
- i. ~~Passenger motor~~ Motor vehicles owned and operated by nonresident military personnel stationed in this state, provided such motor vehicle is registered in the state or territory whereof such military person is a resident, and provided further that current license plates from such state or territory are displayed on such motor vehicle.
- j. Passenger motor vehicles or pickup trucks not exceeding ten thousand pounds [4535.92 kilograms] gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 1901]; provided, however, that such vehicles display a distinctive license plate issued by the registrar of motor vehicles department upon the payment of one dollar five dollars. This exemption shall also apply to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by such a disabled veteran; provided, that it shall be allowed only with respect to one such motor vehicle owned by such a disabled veteran at any one time to no more than two such motor vehicles owned by a disabled veteran at any one time.
- k. Motor vehicles having not over two axles and not being used in combination owned and operated by nonresidents and any motor vehicle or combination of three axles or more operated in this state pursuant to a proportional

licensing or other agreement or arrangement with any jurisdiction having motor vehicle registration authority.

1. Motor vehicles owned and operated by the holder of a valid building mover's permit issued by the public service commission, or by a resident well driller; provided, however, that such vehicles are used only for moving buildings or building moving equipment, or on which is mounted well-drilling equipment; provided, further, that such vehicles display a license plate issued by the registrar of motor vehicles upon the payment of a fee of twenty-five dollars for two axle trucks, fifty dollars for single axle truck-tractor units, and seventy-five dollars for each tandem axle truck-tractor unit.

Any vehicle which has been issued this special motor vehicle license may be registered under the regular motor vehicle registration law, by payment of the difference between the amount paid for the special motor vehicle license and the regular registration fee for such vehicle.

Any vehicle which has been issued this special motor vehicle license and is found being operated upon the highways of this state without being equipped with special house-moving or well-drilling equipment, shall forfeit the fee paid and, in addition, shall be required to register under the regular motor vehicle registration law of this state. None of the above limitations shall be construed as restricting the operation of the special licensed vehicle when such operation would not require a greater fee than that paid for this operation.

- m. Any trailer, semitrailer, or farm trailer when the gross weight, not including the weight of the towing vehicle, does not exceed one thousand five hundred pounds [680.39 kilograms] and it is not for hire or commercial use, or when used to transport recreational vehicles or boats and it is not for hire or commercial use.
- n. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The crossing shall be made at an angle of approximately ninety degrees to the direction of the highway.
- o. Passenger motor vehicles or pickup trucks not exceeding ten thousand pounds [4535.92 kilograms] gross weight owned and operated by a resident who, while serving in the United States armed forces, was a

prisoner of war and has received an honorable discharge from the United States armed forces; provided, however, that the vehicles display a distinctive license plate issued by the ~~registrar of motor vehicles~~ department upon the payment of ~~one dollar~~ five dollars. This exemption shall also apply to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by such a former prisoner of war; provided, that the exemption provided by this subdivision shall be allowed only with respect to one motor vehicle owned by such a former prisoner of war at any one time.

Approved April 4, 1987

Filed April 6, 1987

CHAPTER 453

SENATE BILL NO. 2259
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

VEHICLE REGISTRATION FEES

AN ACT to amend and reenact section 39-04-19 of the North Dakota Century Code, relating to vehicle registration fees; to establish a centennial celebration fee and provide for its collection and distribution; to provide for application of this Act; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-19. Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the ~~commissioner~~ department, shall pay a fee of twenty dollars for a trip permit which shall be valid for a period of seventy-two hours. All fees collected under the provisions of this subsection shall be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state shall be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle first becomes subject to registration other than at the beginning of the registration period, such fees shall be prorated on a monthly basis. The minimum fee charged hereunder shall be five dollars:
 - a. Passenger motor vehicles ~~including buses for hire, hearses, and ambulances:~~

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, and 4th Years	5th, 6th, and 7th Years	8th, 9th, and 10th Years	11th and Subsequent Years	
Less than 3,200	\$ 44.00	\$ 36.00	\$ 28.00	\$ 20.00	
3,200-4,499	64.00	52.00	40.00	28.00	
4,500-4,999	82.00	65.00	50.00	34.00	
5,000-5,999	113.00	91.00	69.00	47.00	
6,000-6,999	146.00	117.00	88.00	60.00	
7,000-7,999	179.00	143.00	108.00	73.00	
8,000-8,999	212.00	170.00	128.00	86.00	
9,000 and over	245.00	196.00	148.00	99.00	

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, and 8th Years	9th, 10th, and 11th Years	12th and Subsequent Years	
Less than 3,200	\$ 47.75	\$ 39.75	\$ 31.75	\$ 23.75	
3,200-4,499	67.75	55.75	43.75	31.75	
4,500-4,999	85.75	68.75	53.75	37.75	
5,000-5,999	116.75	94.75	72.75	50.75	
6,000-6,999	149.75	120.75	91.75	63.75	
7,000-7,999	182.75	146.75	111.75	76.75	
8,000-8,999	215.75	173.75	131.75	89.75	
9,000 and over	248.75	199.75	151.75	102.75	

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and Subsequent Years	
Net ever 4,000	\$42.00	\$29.00	\$24.00	\$21.00	
4,001- 6,000	47.00	34.00	28.00	22.00	
6,001- 8,000	52.00	39.00	32.00	23.00	
8,001-10,000	57.00	44.00	36.00	25.00	
10,001-12,000	62.00	49.00	40.00	27.00	
12,001-14,000	67.00	54.00	44.00	30.00	
14,001-16,000	72.00	59.00	48.00	33.00	
16,001-18,000	77.00	64.00	52.00	35.00	

18,001-20,000 Gross Weights Not over	80.00	67.00	54.00	36.00
	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, 5th	6th and 7th	8th and 9th	10th and Subsequent
	Years	Years	Years	Years
4,001- 6,000	\$45.75	\$32.75	\$27.75	\$24.75
6,001- 8,000	50.75	37.75	31.75	25.75
8,001-10,000	55.75	42.75	35.75	26.75
10,001-12,000	60.75	47.75	39.75	28.75
12,001-14,000	65.75	52.75	43.75	30.75
14,001-16,000	70.75	57.75	47.75	33.75
16,001-18,000	75.75	62.75	51.75	36.75
18,001-20,000	80.75	67.75	55.75	38.75
	83.75	70.75	57.75	39.75

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, and 5th	6th, 7th, 8th, 9th, and 10th	11th and Subsequent	
	Years	Years	Years	
20,001- 22,000	\$ 110.00	\$ 84.00	\$ 71.00	
22,001- 26,000	162.00	132.00	116.00	
26,001- 30,000	223.00	181.00	159.00	
30,001- 34,000	289.00	234.00	206.00	
34,001- 38,000	350.00	283.00	249.00	
38,001- 42,000	411.00	332.00	291.00	
42,001- 46,000	472.00	380.00	334.00	
46,001- 50,000	533.00	429.00	377.00	
50,001- 54,000	603.00	487.00	428.00	
54,001- 58,000	664.00	536.00	471.00	
58,001- 62,000	725.00	585.00	514.00	
62,001- 66,000	786.00	633.00	557.00	
66,001- 70,000	847.00	682.00	599.00	
70,001- 74,000	908.00	731.00	642.00	
74,001- 78,000	969.00	780.00	685.00	
78,001- 82,000	1,030.00	829.00	728.00	
82,001- 86,000	1,153.00	934.00	815.00	
86,001- 90,000	1,275.00	1,038.00	902.00	
90,001- 94,000	1,397.00	1,143.00	989.00	
94,001- 98,000	1,519.00	1,248.00	1,077.00	
98,001-102,000	1,641.00	1,352.00	1,164.00	
102,001-105,500	1,763.00	1,457.00	1,251.00	

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, 5th, and 6th	7th, 8th, 9th, 10th, and 11th	12th and Subsequent	
	Years	Years	Years	
20,001- 22,000	\$ 113.75	\$ 87.75	\$ 74.75	
22,001- 26,000	165.75	135.75	119.75	
26,001- 30,000	226.75	184.75	162.75	
30,001- 34,000	292.75	237.75	209.75	
34,001- 38,000	353.75	286.75	252.75	
38,001- 42,000	414.75	335.75	294.75	
42,001- 46,000	475.75	383.75	337.75	
46,001- 50,000	536.75	432.75	380.75	

50,001- 54,000	606.75	490.75	431.75
54,001- 58,000	667.75	539.75	474.75
58,001- 62,000	728.75	588.75	517.75
62,001- 66,000	789.75	636.75	560.75
66,001- 70,000	850.75	685.75	602.75
70,001- 74,000	911.75	734.75	645.75
74,001- 78,000	972.75	783.75	688.75
78,001- 82,000	1,033.75	832.75	731.75
82,001- 86,000	1,156.75	937.75	818.75
86,001- 90,000	1,278.75	1,041.75	905.75
90,001- 94,000	1,400.75	1,146.75	992.75
94,001- 98,000	1,522.75	1,251.75	1,080.75
98,001-102,000	1,644.75	1,355.75	1,167.75
102,001-105,500	1,766.75	1,460.75	1,254.75

c. Motorcycles, ~~ten~~ thirteen dollars and seventy-five cents.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 1901] shall be exempt from the payment of state sales or use tax and, if paid, such veterans shall be entitled to a refund. This exemption shall also apply to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by such a disabled veteran; provided, that it shall be allowed only with respect to one such motor vehicle owned by such a disabled veteran at any one time but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter shall be furnished registration plates upon the payment of a fifteen dollar annual fee of eighteen dollars and seventy-five cents. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter shall be furnished an identification plate upon the payment of a fee of five dollars.
5. Trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local

trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire.

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, and 4th Years	2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and Subsequent Years
20,001-22,000	\$ 83.00		\$ 69.00	\$ 55.00	\$ 37.00
22,001-24,000	88.00		73.00	58.00	39.00
24,001-26,000	96.00		79.00	62.00	41.00
26,001-28,000	106.00		87.00	68.00	45.00
28,001-30,000	116.00		95.00	74.00	49.00
30,001-32,000	131.00		108.00	85.00	58.00
32,001-34,000	141.00		116.00	91.00	62.00
34,001-36,000	151.00		124.00	97.00	66.00
36,001-38,000	161.00		132.00	103.00	70.00
38,001-40,000	171.00		140.00	109.00	74.00
40,001-42,000	181.00		148.00	115.00	78.00
42,001-44,000	191.00		156.00	121.00	82.00
44,001-46,000	201.00		164.00	127.00	86.00
46,001-48,000	211.00		172.00	133.00	90.00
48,001-50,000	221.00		180.00	139.00	94.00
50,001-52,000	241.00		198.00	155.00	108.00
52,001-54,000	251.00		206.00	161.00	112.00
54,001-56,000	261.00		214.00	167.00	116.00
56,001-58,000	271.00		222.00	173.00	120.00
58,001-60,000	281.00		230.00	179.00	124.00
60,001-62,000	291.00		238.00	185.00	128.00
62,001-64,000	301.00		246.00	191.00	132.00
64,001-66,000	311.00		254.00	197.00	136.00
66,001-68,000	321.00		262.00	203.00	140.00
68,001-70,000	331.00		270.00	209.00	144.00
70,001-72,000	341.00		278.00	215.00	148.00
72,001-74,000	351.00		286.00	221.00	152.00
74,001-76,000	361.00		294.00	227.00	156.00
76,001-78,000	371.00		302.00	233.00	160.00
78,001-80,000	381.00		310.00	239.00	164.00
80,001-82,000	391.00		318.00	245.00	168.00

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and 10th and Subsequent Years
20,001-22,000	\$ 86.75	\$ 72.75	\$ 58.75	\$ 40.75
22,001-24,000	91.75	76.75	61.75	42.75
24,001-26,000	99.75	82.75	65.75	44.75
26,001-28,000	109.75	90.75	71.75	48.75
28,001-30,000	119.75	98.75	77.75	52.75
30,001-32,000	134.75	111.75	88.75	61.75
32,001-34,000	144.75	119.75	94.75	65.75
34,001-36,000	154.75	127.75	100.75	69.75
36,001-38,000	164.75	135.75	106.75	73.75
38,001-40,000	174.75	143.75	112.75	77.75
40,001-42,000	184.75	151.75	118.75	81.75

42,001-44,000	194.75	159.75	124.75	85.75
44,001-46,000	204.75	167.75	130.75	89.75
46,001-48,000	214.75	175.75	136.75	93.75
48,001-50,000	224.75	183.75	142.75	97.75
50,001-52,000	244.75	201.75	158.75	111.75
52,001-54,000	254.75	209.75	164.75	115.75
54,001-56,000	264.75	217.75	170.75	119.75
56,001-58,000	274.75	225.75	176.75	123.75
58,001-60,000	284.75	233.75	182.75	127.75
60,001-62,000	294.75	241.75	188.75	131.75
62,001-64,000	304.75	249.75	194.75	135.75
64,001-66,000	314.75	257.75	200.75	139.75
66,001-68,000	324.75	265.75	206.75	143.75
68,001-70,000	334.75	273.75	212.75	147.75
70,001-72,000	344.75	281.75	218.75	151.75
72,001-74,000	354.75	289.75	224.75	155.75
74,001-76,000	364.75	297.75	230.75	159.75
76,001-78,000	374.75	305.75	236.75	163.75
78,001-80,000	384.75	313.75	242.75	167.75
80,001-82,000	394.75	321.75	248.75	171.75

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the motor vehicle department and upon payment of a fee of twenty-five dollars.

SECTION 2. AMENDMENT. Section 39-04-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-19. Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the ~~commissioner~~ department, shall pay a fee of twenty dollars for a trip permit which shall be valid for a period of seventy-two hours. All fees collected under the provisions of this subsection shall be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state shall be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle first becomes subject to registration other than at the beginning of the registration period, such fees shall be prorated on a monthly basis. The minimum fee charged hereunder shall be five dollars:
 - a. Passenger motor vehicles including buses for hire, hearses, and ambulances:

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, and 4th Years	5th, 6th, and 7th Years	8th, 9th, and 10th Years	11th and Subsequent Years
Less than 3,200	\$ 44.00	\$ 36.00	\$ 28.00	\$20.00
3,200-4,499	64.00	52.00	40.00	28.00
4,500-4,999	82.00	65.00	50.00	34.00
5,000-5,999	113.00	91.00	69.00	47.00
6,000-6,999	146.00	117.00	88.00	60.00
7,000-7,999	179.00	143.00	108.00	73.00
8,000-8,999	212.00	170.00	128.00	86.00
9,000 and over	245.00	196.00	148.00	99.00

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, and 8th Years	9th, 10th, and 11th Years	12th and Subsequent Years
Less than 3,200	\$ 49.00	\$ 41.00	\$ 33.00	\$ 25.00
3,200-4,499	69.00	57.00	45.00	33.00
4,500-4,999	87.00	70.00	55.00	39.00
5,000-5,999	118.00	96.00	74.00	52.00
6,000-6,999	151.00	122.00	93.00	65.00
7,000-7,999	184.00	148.00	113.00	78.00
8,000-8,999	217.00	175.00	133.00	91.00
9,000 and over	250.00	201.00	153.00	104.00

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and Subsequent Years
Net over 4,000	\$42.00	\$29.00	\$24.00	\$21.00
4,001- 6,000	47.00	34.00	28.00	22.00
6,001- 8,000	52.00	39.00	32.00	23.00
8,001-10,000	57.00	44.00	36.00	25.00
10,001-12,000	62.00	49.00	40.00	27.00
12,001-14,000	67.00	54.00	44.00	30.00
14,001-16,000	72.00	59.00	48.00	33.00
16,001-18,000	77.00	64.00	52.00	35.00
18,001-20,000	80.00	67.00	54.00	36.00

Gross Weights Not over 4,000	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years	
4,001- 6,000	\$47.00	\$34.00	\$29.00	\$26.00	
6,001- 8,000	52.00	39.00	33.00	27.00	
8,001-10,000	57.00	44.00	37.00	28.00	
10,001-12,000	62.00	49.00	41.00	30.00	
12,001-14,000	67.00	54.00	45.00	32.00	
14,001-16,000	72.00	59.00	49.00	35.00	
16,001-18,000	77.00	64.00	53.00	38.00	
18,001-20,000	82.00	69.00	57.00	40.00	
	85.00	72.00	59.00	41.00	

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, 8th, 9th, and 10th Years	11th and Subsequent Years		
20,001- 22,000	\$ 110.00	\$ 84.00	\$ 71.00		
22,001- 26,000	162.00	132.00	116.00		
26,001- 30,000	223.00	181.00	159.00		
30,001- 34,000	289.00	234.00	206.00		
34,001- 38,000	350.00	283.00	249.00		
38,001- 42,000	411.00	332.00	291.00		
42,001- 46,000	472.00	380.00	334.00		
46,001- 50,000	533.00	429.00	377.00		
50,001- 54,000	603.00	487.00	428.00		
54,001- 58,000	664.00	536.00	471.00		
58,001- 62,000	725.00	585.00	514.00		
62,001- 66,000	786.00	633.00	557.00		
66,001- 70,000	847.00	682.00	599.00		
70,001- 74,000	908.00	731.00	642.00		
74,001- 78,000	969.00	780.00	685.00		
78,001- 82,000	1,030.00	829.00	728.00		
82,001- 86,000	1,153.00	934.00	815.00		
86,001- 90,000	1,275.00	1,038.00	902.00		
90,001- 94,000	1,397.00	1,143.00	989.00		
94,001- 98,000	1,519.00	1,248.00	1,077.00		
98,001-102,000	1,641.00	1,352.00	1,164.00		
102,001-105,500	1,763.00	1,457.00	1,251.00		

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, 9th, 10th, and 11th Years	12th and Subsequent Years	
20,001- 22,000	\$ 115.00	\$ 89.00	\$ 76.00	
22,001- 26,000	167.00	137.00	121.00	
26,001- 30,000	228.00	186.00	164.00	
30,001- 34,000	294.00	239.00	211.00	
34,001- 38,000	355.00	288.00	254.00	
38,001- 42,000	416.00	337.00	296.00	
42,001- 46,000	477.00	385.00	339.00	
46,001- 50,000	538.00	434.00	382.00	
50,001- 54,000	608.00	492.00	433.00	

54,001- 58,000	669.00	541.00	476.00
58,001- 62,000	730.00	590.00	519.00
62,001- 66,000	791.00	638.00	562.00
66,001- 70,000	852.00	687.00	604.00
70,001- 74,000	913.00	736.00	647.00
74,001- 78,000	974.00	785.00	690.00
78,001- 82,000	1,035.00	834.00	733.00
82,001- 86,000	1,158.00	939.00	820.00
86,001- 90,000	1,280.00	1,043.00	907.00
90,001- 94,000	1,402.00	1,148.00	994.00
94,001- 98,000	1,524.00	1,253.00	1,082.00
98,001-102,000	1,646.00	1,357.00	1,169.00
102,001-105,500	1,768.00	1,462.00	1,256.00

c. Motorcycles, ~~ten~~ fifteen dollars.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 1901] shall be exempt from the payment of state sales or use tax and, if paid, such veterans shall be entitled to a refund. This exemption shall also apply to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by such a disabled veteran, provided, that it shall be allowed only with respect to one such motor vehicle owned by such a disabled veteran at any one time but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter shall be furnished registration plates upon the payment of a ~~fifteen~~ twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter shall be furnished an identification plate upon the payment of a fee of five dollars.
5. Trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than 20,000 but not more than 82,000 pounds [more than 9071.84 but not more than 37194.57 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire.

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, and 4th Years	5th and 6th Years	7th and 8th Years	9th and Subsequent Years
20,001-22,000	\$ 83.00	\$ 69.00	\$ 55.00	\$ 37.00
22,001-24,000	88.00	73.00	58.00	39.00
24,001-26,000	96.00	79.00	62.00	41.00
26,001-28,000	106.00	87.00	68.00	45.00
28,001-30,000	116.00	95.00	74.00	49.00
30,001-32,000	131.00	108.00	85.00	58.00
32,001-34,000	141.00	116.00	91.00	62.00
34,001-36,000	151.00	124.00	97.00	66.00
36,001-38,000	161.00	132.00	103.00	70.00
38,001-40,000	171.00	140.00	109.00	74.00
40,001-42,000	181.00	148.00	115.00	78.00
42,001-44,000	191.00	156.00	121.00	82.00
44,001-46,000	201.00	164.00	127.00	86.00
46,001-48,000	211.00	172.00	133.00	90.00
48,001-50,000	221.00	180.00	139.00	94.00
50,001-52,000	241.00	198.00	155.00	108.00
52,001-54,000	251.00	206.00	161.00	112.00
54,001-56,000	261.00	214.00	167.00	116.00
56,001-58,000	271.00	222.00	173.00	120.00
58,001-60,000	281.00	230.00	179.00	124.00
60,001-62,000	291.00	238.00	185.00	128.00
62,001-64,000	301.00	246.00	191.00	132.00
64,001-66,000	311.00	254.00	197.00	136.00
66,001-68,000	321.00	262.00	203.00	140.00
68,001-70,000	331.00	270.00	209.00	144.00
70,001-72,000	341.00	278.00	215.00	148.00
72,001-74,000	351.00	286.00	221.00	152.00
74,001-76,000	361.00	294.00	227.00	156.00
76,001-78,000	371.00	302.00	233.00	160.00
78,001-80,000	381.00	310.00	239.00	164.00
80,001-82,000	391.00	318.00	245.00	168.00

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years
20,001-22,000	\$ 88.00	\$ 74.00	\$ 60.00	\$ 42.00
22,001-24,000	93.00	78.00	63.00	44.00
24,001-26,000	101.00	84.00	67.00	46.00
26,001-28,000	111.00	92.00	73.00	50.00
28,001-30,000	121.00	100.00	79.00	54.00
30,001-32,000	136.00	113.00	90.00	63.00
32,001-34,000	146.00	121.00	96.00	67.00
34,001-36,000	156.00	129.00	102.00	71.00
36,001-38,000	166.00	137.00	108.00	75.00
38,001-40,000	176.00	145.00	114.00	79.00
40,001-42,000	186.00	153.00	120.00	83.00
42,001-44,000	196.00	161.00	126.00	87.00
44,001-46,000	206.00	169.00	132.00	91.00
46,001-48,000	216.00	177.00	138.00	95.00
48,001-50,000	226.00	185.00	144.00	99.00

50,001-52,000	246.00	203.00	160.00	113.00
52,001-54,000	256.00	211.00	166.00	117.00
54,001-56,000	266.00	219.00	172.00	121.00
56,001-58,000	276.00	227.00	178.00	125.00
58,001-60,000	286.00	235.00	184.00	129.00
60,001-62,000	296.00	243.00	190.00	133.00
62,001-64,000	306.00	251.00	196.00	137.00
64,001-66,000	316.00	259.00	202.00	141.00
66,001-68,000	326.00	267.00	208.00	145.00
68,001-70,000	336.00	275.00	214.00	149.00
70,001-72,000	346.00	283.00	220.00	153.00
72,001-74,000	356.00	291.00	226.00	157.00
74,001-76,000	366.00	299.00	232.00	161.00
76,001-78,000	376.00	307.00	238.00	165.00
78,001-80,000	386.00	315.00	244.00	169.00
80,001-82,000	396.00	323.00	250.00	173.00

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the motor vehicle department and upon payment of a fee of twenty-five dollars.

SECTION 3. CENTENNIAL CELEBRATION FEE - COLLECTION. A centennial celebration fee is imposed on every vehicle subject to registration under section 39-04-19. The fee is one dollar and twenty-five cents per vehicle. The fee is payable when the registration fee under section 39-04-19 is payable. Each month the registrar of motor vehicles shall transfer to the centennial commission the centennial celebration fee collected in accordance with this Act. The centennial commission shall place the fees in the centennial commission revolving fund.

SECTION 4. APPLICATION OF ACT. Section 1 of this Act applies to vehicle registration periods beginning after December 31, 1987, and before January 1, 1989. Section 2 of this Act applies to vehicle registration periods beginning after December 31, 1988. A vehicle registration period begins on the first day of the month in which the vehicle becomes subject to registration in this state.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Sections 1 and 3 of this Act are effective through December 31, 1988, and after that date are ineffective. Section 2 of this Act becomes effective on January 1, 1989.

Approved April 21, 1987
 Filed April 22, 1987

CHAPTER 454

SENATE BILL NO. 2260
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

VEHICLE TRANSPORTER'S LICENSE

AN ACT to amend and reenact section 39-04-44.1 of the North Dakota Century Code, relating to a vehicle transporter's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-44.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-44.1. Transportation certificate and in-transit plate transporter's license and registration card. A vehicle otherwise properly registered may be used for transporting other vehicles not registered provided that the transporting transported vehicle have has displayed a distinctive certificate which shall be available from the registrar of motor vehicles upon payment of an annual fee of fifty dollars and provided further that each transported vehicle have displayed thereon a distinctive in-transit plate, which shall be transferable, which shall be available from the registrar upon payment of fifteen dollars for each such annual in-transit plate transporter's license plate and the transporting vehicle carries a transporter's registration card. The fee for the transporter's license plate and registration card is sixty-five dollars per year.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 455

SENATE BILL NO. 2200
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

PROOF OF MOTOR VEHICLE OWNERSHIP

AN ACT to amend and reenact subsection 1 of section 39-05-20 of the North Dakota Century Code, relating to obtaining certificate of title to a vehicle upon inability to obtain old certificate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-05-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. When the transferee of a vehicle is unable to obtain a properly assigned certificate of title for a vehicle, and makes application for a new certificate and presents satisfactory proof of ownership, the department may cancel the old certificate and issue a new certificate to the transferee. The department may establish procedures for determining satisfactory proof of ownership of a vehicle in those cases where the department is unable to determine the legal owner of record. Any person aggrieved by a decision of the department as to ownership of a vehicle may appeal that decision to the district court under chapter 28-32.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 456

HOUSE BILL NO. 1393
(Moore)

SALVAGE CERTIFICATES OF TITLE

AN ACT to amend and reenact sections 39-05-20.1 and 39-05-20.2 of the North Dakota Century Code, relating to issuance and contents of motor vehicle salvage certificates of title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-20.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-20.1. Salvage certificate of title. The department shall issue a salvage certificate of title for a salvaged or destroyed vehicle when the owner of the vehicle has returned the certificate of title for the vehicle to the department. The department shall prescribe the form and content of the salvage certificate of title. The certificate must include a prominent notation that it has been issued for a salvaged motor vehicle.

SECTION 2. AMENDMENT. Section 39-05-20.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-20.2. Issuance of salvage certificate of title. Any person or organization who completely destroys or completely dismantles a vehicle so as to cause that vehicle to lose its identity shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title.

If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The application shall be accompanied by a certificate of inspection in the form and with the contents specified by the department, surrender of the salvage certificate of title, and the payment of a five dollar fee. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application, or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 457

SENATE BILL NO. 2093
(Wright)

OPERATOR'S LICENSE FEES

AN ACT to amend and reenact subsections 1 and 9 of section 39-06-03.1, subsection 1 of section 39-06-14, and section 39-06-19 of the North Dakota Century Code, relating to nondriver photo identification cards and motor vehicle operator's licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 9 of section 39-06-03.1 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The commissioner shall issue upon request a nondriver color photo identification card to any person, of the age of ~~sixteen~~ fourteen years or over, fulfilling the requirements of this section. If the person is under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license of an operator under the age of twenty-one years.
9. A duplicate card may be obtained by making an application and paying a ~~three~~ an eight dollar fee. For a cardholder who has reached the age of twenty-one, a replacement card may be obtained by making an application and paying an eight dollar fee.

** SECTION 2. AMENDMENT. Subsection 1 of section 39-06-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner shall, upon payment of ~~an eight~~ a ten dollar fee, issue to every applicant qualifying therefor an operator's license as applied for in the form prescribed by the commissioner. The license shall bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the

* NOTE: Subsections 1 and 9 of section 39-06-03.1 were also amended by section 2 of Senate Bill No. 2270, chapter 440.

** NOTE: Section 39-06-14 was also amended by section 4 of Senate Bill No. 2270, chapter 440.

licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write ~~his~~ the licensee's usual signature. If the licensee is under the age of twenty-one, the photograph must be against a color background that is different from the color used for other licensees. If requested on the license application, the license issued by the commissioner shall identify the licensee as a donor under the provisions of chapter 23-06.1. No license shall be is valid until it has been ~~so~~ signed by the licensee with the licensee's usual signature. For purposes of verification, an officer may require the licensee to write ~~his~~ the licensee's signature in the presence of such officer. The commissioner shall have the authority to promulgate may adopt rules and regulations, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses.

* SECTION 3. AMENDMENT. Section 39-06-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-19. Expiration of license - Renewal. Every operator's license issued under this chapter shall expire and be renewed according to this section. The expiration date of operator's license for every person whose year of birth occurred in a year ending in an odd numeral shall be is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of operator's license for every person whose year of birth occurred in a year ending in an even numeral shall be is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. Application If the licensee has reached the age of twenty-one and desires reissuance of a license without the distinctive color background required by section 39-06-14, the applicant may apply at any time for a replacement license. In all other cases, application with fee for renewal of license shall be presented to the commissioner not prior to ten months before the expiration date of the operator's license. The commissioner may require an examination of an applicant as upon an original application. Every application for renewal of a license by an applicant shall be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant. The commissioner shall provide visual examination equipment at each location where a license may be renewed. An application for a motor vehicle operator's license from an applicant applying for first license under the age of twenty-one may be accompanied by a certificate of examination from a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant, in lieu of the eye examination conducted by the driver licensing authorities. No certificate of examination shall be dated more than six months prior to the date of the driver license

* NOTE: Section 39-06-19 was also amended by section 6 of Senate Bill No. 2270, chapter 440.

application. Every person submitting application and fee for renewal of license one year or more after expiration of license, except an applicant whose military, or merchant marine service has terminated less than ~~sixty~~ thirty days prior to such application, shall be treated as a new driver and subject to the examination as upon an original application. The fee for every renewal or replacement of an operator's license shall be eight is ten dollars.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 458

HOUSE BILL NO. 1228
(Committee on Transportation)
(At the request of the Highway Department)

DRIVER'S LICENSE REQUIREMENTS

AN ACT to create and enact a new subsection to section 39-06-32 and two new subsections to section 39-06-40 of the North Dakota Century Code, relating to operator's license suspensions and the unlawful use of an operator's license, permit, or nondriver photo identification card and the revoking of the operator's license, permit, or nondriver photo identification card; and to amend and reenact subsection 5 of section 39-06-03.1, sections 39-06-04, 39-06-05, 39-06-06, 39-06-07.1, 39-06-10, subsection 3 of section 39-06-17, section 39-06-24, subsection 3 of section 39-06-32, subsection 2 of section 39-06-37, sections 39-06-38, 39-06-40, and subsections 1, 2, and 4 of section 39-06-40.1 of the North Dakota Century Code, relating to the use of nondriver photo identification cards, operator permits and license applications, financial responsibility of minors, restriction or cancellation of operators' licenses, fraudulent or unlawful use of an operator's license, surrender and return of an operator's license, foreign operators' licenses, and reproducing an operator's license, permit, or personal identification card.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 39-06-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Any misrepresentation of age or other deceit practiced in the procurement of the card provided for by this section, or use or exhibition for the purpose of misleading any other person as to the age or identity of the user, or use of the card of another, or the lending or alteration of the card is a class B misdemeanor. It shall be a class B misdemeanor for any person, except the commissioner, or his authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section. It shall be a class B misdemeanor to display a card issued

~~under this section which has been altered in any manner so as to not truly indicate the bearer's name and date of birth.~~

SECTION 2. AMENDMENT. Section 39-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-04. Instruction permit. Any person who is at least fourteen years of age may apply to the commissioner for an instruction permit. The commissioner may in his discretion issue to the applicant an instruction permit which shall entitle the applicant while having such permit in his immediate possession to drive a motor vehicle upon the public highways for a period of ~~six months~~ one year when accompanied by a licensed operator who holds a license corresponding to the vehicle he operates and has had at least one year of driving experience and who is occupying a seat beside the driver, except in the event the permittee is operating a motorcycle. Persons holding an instruction permit for the operation of a motorcycle shall operate the motorcycle only during hours when the use of headlights is not required pursuant to section 39-21-01, and shall not carry or transport any passenger. Any such instruction permit may be renewed or a new permit issued for an additional period. A person who is not yet eighteen years of age is not eligible for a license under this chapter until that person has had an instruction permit issued under this chapter for at least three months.

SECTION 3. AMENDMENT. Section 39-06-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-05. Restricted instruction permit - When instruction permit not required.

1. The commissioner upon receiving proper application may in his discretion issue a restricted instruction permit effective for a school year or more restricted period to an applicant who is at least fourteen years of age and enrolled in a commercial driver training course which includes practice driving and which is approved by the superintendent of the highway patrol pursuant to chapter 39-25 even though the applicant has not reached the legal age to be eligible for an operator's license. Such instruction permit shall entitle the permittee when he has such a permit in his immediate possession to operate a motor vehicle only on a designated highway or within a designated area but only when an approved instructor is occupying a seat beside the permittee.
2. Any student who is enrolled in behind-the-wheel driver's training through a high school program approved by the superintendent of public instruction may operate a motor vehicle, under the supervision of a driver training instructor certified by the superintendent of public

instruction, without a permit or license to operate a motor vehicle; provided, that the school district sponsoring the driver's training program has an insurance policy covering any damage which may be done by any such student while operating the vehicle, and provided further that proof of coverage is filed with the superintendent of public instruction by the school district's insurance carrier. The amount of the insurance coverage must be in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars because of injury to or destruction of property of others in any one accident the amount required under section 39-16.1-02.

SECTION 4. AMENDMENT. Section 39-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-06. Temporary driver's operator's permit. The commissioner may ~~in his discretion~~ issue a temporary driver's operator's permit for the operation of a motor vehicle to an applicant for an operator's license ~~permitting him to operate a motor vehicle while the commissioner is completing his pending an~~ investigation and determination of all facts relative to ~~such the~~ applicant's right to receive an operator's license. ~~Such~~ The permit must be in ~~his the applicant's~~ immediate possession while operating a motor vehicle, and ~~it shall be is~~ invalid when the applicant's license has been issued or ~~for good cause has been refused denied.~~

SECTION 5. AMENDMENT. Section 39-06-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-07.1. Proof of name and date of birth for operator's license application. The name and date of birth on all ~~original~~ applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:

1. Birth certificate; or
2. Any other documentary evidence which confirms to the satisfaction of the ~~examining officer~~ commissioner the true identity and date of birth of the applicant.

SECTION 6. AMENDMENT. Section 39-06-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-10. Liability for negligence of minor - Proof of financial responsibility. ~~In the event If~~ a minor deposits or there is deposited ~~upon his behalf for the minor~~ proof of financial responsibility ~~in respect to~~ for the operation of a motor vehicle owned by ~~him the~~

minor, or if not the owner of a motor vehicle, then with respect to for the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, then the commissioner may accept the application of such the minor.

SECTION 7. AMENDMENT. Subsection 3 of section 39-06-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A restricted operator's license or permit to operate his the parent's or guardian's automobile, or any other an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of his the parent or guardian. No driver's operator's license shall be issued until the child, accompanied by his the parent or guardian, shall appear appears in person and satisfy satisfies the examining officer commissioner that:
 - a. The child is at least fourteen years of age.
 - b. The child is qualified to operate an automobile safely.
 - c. It is necessary for the child to drive his the parent's or guardian's automobile without being accompanied by an adult.
 - d. The child has completed a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the commissioner; or, in the alternative, has successfully completed a course at an approved commercial driver training school.

The parent or guardian, at all times shall be responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection shall do not authorize the child to drive a motorcycle, commercial truck, motorbus, or taxicab, or a truck having a gross weight in excess of fifty thousand pounds or greater.

SECTION 8. AMENDMENT. Section 39-06-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-24. Authority to cancel ~~license~~ license. The commissioner may cancel any operator's license ~~or,~~ permit, or nondriver photo identification card upon determining that the ~~licensee~~ person is not entitled to the issuance of a ~~license~~ the document under the laws of this state or that said ~~licensee~~ person failed to give the required or correct information on his the application or ~~committed any fraud~~

in making such application or the fee was in the form of an insufficient fund or no-account check. Upon such cancellation, the licensee must surrender the license or permit so canceled to the commissioner. The making of a false statement in any application for an operator's license, permit, or nondriver photo identification card, concerning the applicant's age or the prior loss of driving privileges through a cancellation, suspension, revocation, or similar sanction in any state, is grounds for the commissioner to cancel any document or privilege issued on the basis of the application.

SECTION 9. AMENDMENT. Subsection 3 of section 39-06-32 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Unlawful or fraudulent use of his an operator's license.

SECTION 10. A new subsection to section 39-06-32 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Conviction of an offense under this title and it appears from the commissioner's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

* SECTION 11. AMENDMENT. Subsection 2 of section 39-06-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If any person fails immediately to return to the commissioner any license or permit which has been canceled, suspended, or revoked, the order of the commissioner shall authorize any highway patrolman or peace officer or the commissioner's designated agent to secure possession thereof and return the same to the commissioner. A suspension, revocation, or cancellation ordered under this title shall be deemed to have commenced when the order is delivered to the licensee at his the address of record in the department pursuant to section 39-06-20. Constructive delivery under this section shall be considered as occurring forty-eight hours after the order is mailed to the person by regular mail.

SECTION 12. AMENDMENT. Section 39-06-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-38. No operation under foreign license during suspension or revocation in this state. Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this title shall not operate a motor vehicle in this state under a

* NOTE: Section 39-06-37 was also amended by section 1 of House Bill No. 1173, chapter 462.

license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this title.

SECTION 13. AMENDMENT. Section 39-06-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-40. Unlawful use of license - Penalty. It is a class B misdemeanor for any person:

1. To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or fraudulently altered operator's or chauffeur's license, permit, or nondriver photo identification card;
2. To lend his one's operator's or chauffeur's license, permit, or nondriver photo identification card to any other person or knowingly permit the use thereof by another;
3. To display or represent as one's own any operator's or chauffeur's license, permit, or nondriver identification card not issued to him that person;
4. To fail or refuse to surrender to the commissioner upon his lawful demand any operator's or chauffeur's license, permit, or nondriver photo identification card which has been suspended, revoked, or canceled; or
5. To permit any unlawful use of an operator's or chauffeur's license, permit, or nondriver photo identification card issued to him that person.

SECTION 14. Two new subsections to section 39-06-40 of the North Dakota Century Code are hereby created and enacted to read as follows:

To use a false or fictitious name in any application for an operator's license, permit, or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.

The commissioner upon receiving a record of conviction or other satisfactory evidence of the violation of this section shall immediately revoke the person's operator's license, driving privileges, permit, or nondriver photo identification card. The period of revocation is at the discretion of the commissioner, not to exceed six months.

SECTION 15. AMENDMENT. Subsections 1, 2, and 4 of section 39-06-40.1 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. It ~~shall be~~ is unlawful for any person to print, photograph, photostat, duplicate, alter, or in any way reproduce any operator's ~~or driver's~~ license ~~or~~, permit, nondriver photo identification card or facsimile thereof, or to print, photograph, photostat, duplicate, alter, or in any way reproduce any document used in the production of any operator's or driver's license or permit or facsimile thereof, in such a manner that it would be mistaken for a valid license or document containing valid information, or to display or have in ~~his~~ possession any such print, photograph, photostat, duplicate, reproduction, or facsimile unless authorized by ~~the provisions of the North Dakota law.~~
2. It ~~shall also be~~ is unlawful for any person to alter in any manner any operator's ~~or driver's~~ license ~~or~~, permit, nondriver photo identification card or to display or have in ~~his~~ possession any altered operator's or driver's license or permit such document.
4. The commissioner upon receiving a record of ~~the~~ conviction or other satisfactory evidence of the violation of this section shall immediately revoke ~~forthwith~~ the operator's ~~or driver's~~ license ~~or~~, driving privileges, or permit of such the person. In like manner, a nondriver photo identification card shall be canceled. The period of revocation shall be determined at the discretion of the commissioner, not to exceed six months.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 459

HOUSE BILL NO. 1162
(Committee on Transportation)
(At the request of the Highway Department)

EXAMINATION FOR OPERATOR'S LICENSES

AN ACT to amend and reenact section 39-06-13 of the North Dakota Century Code, relating to the agency in charge of the examination of applicants for operator's licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-13. Examination of applicants. The ~~highway patrol~~ commissioner shall examine every applicant for an operator's license, except as otherwise provided in this chapter. Such examination shall include a test of the applicant's eyesight, ~~his~~ ability to read and understand highway signs regulating, warning, and directing traffic, and ~~his~~ knowledge of the traffic laws of this state. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall also be required, but may be waived for those applicants who have successfully passed such a test in some other state. The ~~highway patrol~~ commissioner shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than thirty days from the date the application is received. The commissioner may require such other physical or mental examination as may be deemed advisable. After three unsuccessful attempts to pass, within any six-month period, all parts of any license examination required to be taken pursuant to this chapter, no person shall be allowed to make another attempt to pass any unsuccessfully attempted parts of the license examination within four months of the last unsuccessful attempt.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 460

SENATE BILL NO. 2468
(Senators Redlin, Olson, Wright)
(Representatives J. DeMers, Kelly, Moore)

DUI OFFENSES

AN ACT to create and enact a new section to chapter 39-20 of the North Dakota Century Code, relating to death or serious bodily injury caused by a driver under the influence of intoxicating liquor or a controlled substance; and to amend and reenact sections 39-06-31, 39-06.1-05, subdivision a of subsection 3.1 of section 39-06.1-10, sections 39-07-08, 39-07-11 or in the alternative to amend and reenact section 39-07-11 as amended by section 2 of House Bill No. 1323, as approved by the fiftieth legislative assembly, 39-08-01, 39-08-01.2, 39-20-01, subsection 3 of section 39-20-03.1, subsection 3 of section 39-20-03.2, sections 39-20-04, 39-20-06, and 54-38-05 of the North Dakota Century Code, relating to law enforcement, judicial, and administrative procedures, sanctions, and penalties for driving or being in actual physical control of a motor vehicle while under the influence of alcohol or a controlled substance; to repeal section 39-06-33.1 of the North Dakota Century Code, relating to the suspension of a driver's license for causing injury or death; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-31 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-31. Mandatory revocation of licenses. The commissioner shall revoke forthwith, for a period of one year, or for such period as may be recommended by the trial court, the license of any operator upon receiving a record of such operator's conviction of any of the following offenses:

1. Manslaughter or negligent homicide resulting from operation of a motor vehicle.
- 2- Any felony, including a violation of chapter 12.1-16, in the commission of which a motor vehicle is used.

2. Any misdemeanor resulting from the operation of a motor vehicle and causing serious bodily injury, as defined in section 12.1-01-04, to another person.
3. The making of a false affidavit or statement under oath to the commissioner under this chapter or under any other law relating to the ownership or operation of motor vehicles.
4. ~~Any offense classified as a felony which is a violation of section 39-08-01-2.~~

The revocation of the license under this ~~subsection~~ section may be beyond any time of imprisonment or court-ordered inpatient addiction treatment.

SECTION 2. AMENDMENT. Section 39-06.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-05. Offenses excepted. The procedures authorized under sections 39-06.1-02 and 39-06.1-03 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
2. ~~Repealed by S-L 1975, ch. 339, § 11.~~
3. Reckless driving or aggravated reckless driving in violation of section 39-08-03, or an equivalent ordinance.
4. ~~Negligent homicide in violation of section 12.1-16-03.~~
5. 3. Manslaughter ~~A violation of chapter 12.1-16~~ resulting from the operation of a motor vehicle.
6. 4. Leaving the scene of an accident in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.
7. 5. Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.
8. 6. Violating subdivision b or c of subsection 5 of section 39-24-09.
9. ~~Repealed by S-L 1977, ch. 354, § 4.~~
10. 7. Operating a modified motor vehicle in violation of section 39-21-45.1.

~~11-~~ 8. Driving without liability insurance in violation of section 39-08-20.

SECTION 3. AMENDMENT. Subdivision a of subsection 3.1 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. If the commissioner is informed by a court that a person has been convicted of violating section 39-08-01 or equivalent ordinance, the commissioner, subject to the offender's opportunity for hearing under subsection 1, may not restore the operator's license to the offender until the offender furnishes to the commissioner the written statement of the counselor or instructor of an appropriate licensed addiction treatment program that the offender does not require a either an education or treatment program or that the offender has physically attended the prescribed ~~treatment~~ program and has complied with the attendance rules. The commissioner shall send notice to the offender informing the offender of the provisions of this subsection.

SECTION 4. AMENDMENT. Section 39-07-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-08. Hearing - Time - Promise of defendant to appear - Failure to appear - Penalty. The time to be specified in the summons or notice provided for in section 39-07-07 ~~shall~~ must be within ten days after the issuance of ~~such the~~ summons or notice unless the person halted shall demand an earlier hearing, and, if the person halted desires, ~~he the person~~ may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. ~~Such~~ The hearing ~~shall~~ must be before a magistrate of the city or county in which the offense was committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, ~~such the~~ officer shall release ~~him the person~~ from custody. Any person refusing to give ~~such a~~ written promise to appear ~~shall~~ must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating ~~his the person's~~ written promise to appear ~~shall be is~~ guilty of a class B misdemeanor, regardless of the disposition of the charge upon which ~~he the person~~ originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

SECTION 5. AMENDMENT. If House Bill No. 1323 does not become effective, section 39-07-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-11. Magistrate to keep record of convictions of traffic violations - Records of conviction to be forwarded to licensing authority. Every magistrate in this state, as defined in section 29-01-14, shall keep a full record of every case brought before the magistrate in which a person is charged with a violation of ~~section 12-1-16-02 or 12-1-16-03~~ chapter 12.1-16 resulting from the operation of a motor vehicle, or of any provision of chapters 39-05 through 39-13, 39-21, and 39-24, or with a violation of a municipal ordinance which is equivalent to any of the provisions of the foregoing statutes. Within ten days after a final order or judgment of conviction, for a violation not subject to disposition and reporting under chapter 39-06.1, by the North Dakota supreme court or any lower court having jurisdiction, provided that no appeal is pending and the time for filing a notice of appeal has elapsed, the magistrate then having jurisdiction shall forward a report of that fact to the licensing authority. If the reported violation caused another person's serious bodily injury, as defined in section 12.1-01-04, the magistrate shall include that information in the report. Any conviction for which a report is received by the licensing authority may be deemed by the licensing authority to be final, and the licensing authority may take any action authorized by law to be taken based on the report. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is suspended under chapter 12-53; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 6. AMENDMENT. If House Bill No. 1323 becomes effective, section 39-07-11 of the North Dakota Century Code, as amended by section 2 of House Bill No. 1323 is hereby amended and reenacted to read as follows:

39-07-11. Magistrate to keep record of convictions of traffic violations - Records of conviction to be forwarded to licensing authority. Every magistrate in this state, as defined in section 29-01-14, shall keep a full record of every case brought before the magistrate in which a person is charged with a violation of ~~section 12-1-16-02 or 12-1-16-03~~ chapter 12.1-16, or of any provision of chapters 39-05 through 39-13, 39-21, and 39-24, or with a violation of a municipal ordinance which is equivalent to any of the provisions of the foregoing statutes. Within ten days after a final order or judgment of conviction, for a violation not subject to disposition and reporting under chapter 39-06.1, by the North Dakota supreme court or any lower court having jurisdiction, provided that no appeal is pending and the time for filing a notice of appeal has elapsed, the magistrate then having jurisdiction shall forward a report of that fact to the licensing authority. The licensing authority may receive reports of traffic offense convictions submitted by a court

in this state for any conviction of a licensed operator for violation of an ordinance equivalent to section 12.1-16-02 or 12.1-16-03. Any conviction for which a report is received by the licensing authority may be deemed by the licensing authority to be final, and the licensing authority may take any action authorized by law to be taken based on the report. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is suspended under chapter 12-53; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 7. AMENDMENT. Section 39-08-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-01. Persons under the influence of intoxicating liquor or ~~controlled~~ any other drugs or substances not to operate vehicle - Penalty.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is a habitual user of narcotic drugs or is under the influence of a narcotic any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any ~~controlled~~ substance other drugs or substances to a degree which renders that person incapable of safely driving.
 - e- That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. A person may not be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a- That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being in physical control of a vehicle.
 - b- That person is under the influence of intoxicating liquor.
 - c- That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.
 - d- That person is under the influence of any controlled substance to a degree which renders that person incapable of safely driving.
 - e- That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.
- 3- A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second conviction in a five-year period, and of a class A misdemeanor for a later conviction in a five-year period. Notwithstanding the other provisions of this subsection, a person violating this section or equivalent ordinance is guilty of a class A misdemeanor for the fourth or subsequent conviction in a seven-year period. The minimum penalty for violating this section is as provided in subsection 5 4. The court shall take judicial notice of the fact that a conviction would be a subsequent conviction if indicated by the records of the commissioner or may make such finding based on other evidence.
- 4- 3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff or the chief law enforcement officer of the city, as is appropriate, for the duration of the period of suspension of the offender's driver's license or driving

privilege by the licensing authority. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the registrar of motor vehicles.

- 5- 4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
- a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand dollars, and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - d. For a fourth offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
 - e. A sentence or imposition of sentence under this section may not be suspended under chapter 12-53 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
 - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
 - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service, which

sentence or imposition of sentence may not be suspended under chapter 12-53.

- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section shall be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- g. If the penalty mandated by this section includes imprisonment upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo inpatient treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the inpatient treatment must be credited as a portion of a sentence of imprisonment under this section.

SECTION 8. AMENDMENT. Section 39-08-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol.

- 1. ~~If a person is charged with violation of section 39-08-01 and violation of section 12-1-16-02, 12-1-16-03, or 39-08-03 arising from the same occurrence, the court shall consolidate the charges for trial. The penalty provided in this section applies when the court finds the person guilty of violation of section 39-08-01 and section 12-1-16-02 or 12-1-16-03, or a violation of sections 39-08-01 and 39-08-03 if the court finds that the violation caused serious bodily injury, as defined in section 12-1-01-04, to another person:~~
 - a. A person is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the person's operation of a motor vehicle while under the influence of alcohol or drugs;
 - b. A person is convicted of violating section 39-08-03 based in part on the evidence of the person's operation of a motor vehicle while under the influence of alcohol or drugs and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person; or
 - c. A person is convicted of violating section 39-08-01 and the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person.

2. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 and section 12-1-16-02 or 12-1-16-03 offense under chapter 12.1-16, the sentence under section 12-1-16-02 or 12-1-16-03 that chapter must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 and or section 39-08-03, the sentence under either section 39-08-03 must be at least ninety days' imprisonment. The sentence for violation of section 12-1-16-02, 12-1-16-03, under chapter 12.1-16 or section 39-08-01 or 39-08-03 may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon. The sentence for violation of section 12-1-16-02, 12-1-16-03, or 39-08-03 under this section must be consecutive to any sentence imposed for violating section 39-08-01 or equivalent ordinance.
3. If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20.

SECTION 9. AMENDMENT. Section 39-20-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-01. Implied consent to determine alcoholic and drug content of blood. Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in this chapter the word "drug" means a "controlled substance" as defined in section 19-03-1-01 any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. The arresting officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The arresting officer shall determine which of the tests is to be used.

SECTION 10. A new section to chapter 39-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Chemical test of driver in serious bodily injury or fatal crashes. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the driver is in violation of section 39-08-01, the driver may be compelled by a police officer to submit to a test or tests of the driver's blood, breath, saliva, or urine to determine the alcohol concentration or the presence of other drugs or substances.

SECTION 11. AMENDMENT. Subsection 3 of section 39-20-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The arresting officer, within five days of the issuance of the temporary operator's permit, shall forward to the commissioner a sworn certified written report in the form required by the commissioner and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the sworn report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for blood alcohol concentration under this chapter, and that the results of the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight. In addition to the operator's license and sworn report, the law enforcement officer shall forward to the commissioner a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

SECTION 12. AMENDMENT. Subsection 3 of section 39-20-03.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the commissioner a sworn certified written report in the form required by the commissioner and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of

the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the ~~sworn~~ report shall include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the ~~sworn~~ report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for blood alcohol concentration under this chapter, and that the results of the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight.

* SECTION 13. AMENDMENT. Section 39-20-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none shall be given, but the law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next ~~twenty~~ twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The commissioner, upon the receipt of that person's operator's license and a ~~sworn~~ certified written report of the law enforcement officer in the form required by the commissioner, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing

* NOTE: Section 39-20-04 was also amended by section 3 of Senate Bill No. 2472, chapter 481.

and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the commissioner shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the commissioner may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

1. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
2. Two years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
3. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 14. AMENDMENT. Section 39-20-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-06. Judicial review. Any person whose operator's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the hearing officer's decision, section 28-32-15 notwithstanding, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other

proceedings. It is the record on which the appeal shall must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 15. AMENDMENT. Section 54-38-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-38-05. Duties of department. The department shall:

1. Study alcoholism and drug abuse and related problems, including methods and facilities available for the care, custody, detention, treatment, employment, and rehabilitation of resident alcoholics and drug dependent persons.
2. Promote meetings and programs for the discussion of alcoholism and drug abuse or any of their aspects, disseminate information on the subject of alcoholism and drug abuse for the guidance and assistance of individuals, courts, and public or private agencies for the prevention of alcoholism and drug abuse, and inform and educate the general public on problems of alcoholism and drug abuse, their prevention and treatment, to the end that alcoholism and drug abuse may be prevented and that persons suffering from alcoholism or drug dependency may be disposed to seek available treatment.
3. Conduct, promote, and finance, in full or in part, studies, investigations, and research, independently or in cooperation with universities, colleges, scientific organizations, and public or private agencies.
4. Accept for examination, diagnosis, guidance, and treatment, insofar as funds permit, any resident of the state coming to the department of his own volition for advice and guidance.
5. Establish, from time to time, policies governing the evaluation, acceptance, care, and treatment of alcoholics and drug dependent persons.
6. Develop, through consultation with the highway commissioner, a policy governing programs for persons who, subsequent to being convicted for traffic offenses, are referred to educational courses on alcohol, drugs, and driving.

*** SECTION 16. REPEAL.** Section 39-06-33.1 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 21, 1987
Filed April 22, 1987

* NOTE: Section 39-06-33.1 was also repealed by section 4 of House Bill No. 1197, chapter 461.

CHAPTER 461

HOUSE BILL NO. 1197
(Committee on Transportation)
(At the request of the Highway Department)

OPERATOR'S LICENSE SUSPENSION OR REVOCATION

AN ACT to amend and reenact section 39-06-33, subsection 1 of section 39-06.1-10, and section 39-16-02 of the North Dakota Century Code, relating to hearings for administrative appeals; and to repeal sections 39-06-33.1 and 39-06-39 of the North Dakota Century Code, relating to the authority to suspend licenses after traffic death or injury and administrative and judicial review of license suspensions and revocations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-33 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-33. Hearings on suspension.

1. In matters of driver's license suspension or revocation arising under ~~section 39-06-33~~ chapter 39-06, section 39-06.1-10, and chapter 39-16, the commissioner shall first give notice of intention to suspend to the licensee by mailing the notice to the licensee at the address of record in the department under section 39-06-20. Actual notice of the opportunity for a hearing under this section must be deemed to have occurred forty-eight hours after the notice is mailed by regular mail. The licensee shall have ten days ~~from~~ after the date of ~~receipt~~ mailing of the notice to request, in writing, a hearing on the intended suspension or revocation.
2. Any hearing conducted under this section ~~must be before the commissioner or an authorized agent~~ and ~~any appeal from the decision of the hearing must be conducted under chapter 28-32,~~ except the hearing must be heard within sixty days of the receipt of the request for hearing and in the county of the licensee's residence, unless the parties agree to a different time and place for the hearing. ~~At the hearing, the commissioner or the duly~~

authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant evidentiary matter. At the hearing, the regularly kept records of the commissioner may be introduced and are prima facie evidence of their contents without further foundation.

3. Within twenty days of the completion of the hearing, the commissioner or the authorized agent shall issue a written order evincing the determination made. The mailing of the decision and the resulting order by regular mail to the address recorded in the files of the commissioner under section 39-06-20 is sufficient notice. If a suspension is ordered, a reexamination of the licensee may be required.
4. If a suspension is ordered under subsection 2 of section 39-06-32, the notice must include a specific description of the conditions which led to the conclusion that the licensee is incompetent to drive a motor vehicle. If during the suspension those conditions dissipate, the licensee may request another hearing on the issue of competence to drive a motor vehicle. The hearing must be held in the manner required under subsections 2 and 3 for the original suspension.

SECTION 2. AMENDMENT. Subsection 1 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. When a report of a conviction of a traffic offense, or admission or adjudication of a traffic violation is received by the licensing authority, the licensing authority shall proceed to enter the proper number of points on the licensee's driving record, unless the number points assigned to the violation are two or less. If the number points assigned to the violation are two or less the violation and points shall not be entered on the driving record but shall be recorded separately, and the separate record shall not be available to the public. Points from violations in which the assigned number points are two or less shall be considered a part of the driving record only for purposes of point reduction pursuant to section 39-06.1-13 and for purposes of license suspension. When the driving record shows that the licensee has an accumulated point total of twelve or more points, assigned on the basis of the schedule contained in subsection 3 of this section, the authority shall notify the licensee of its intention to suspend the operator's license and of the availability of an administrative hearing. If the licensee makes a written request for a hearing within ten days after mailing of the notice, the hearing shall be held in accordance with according to the applicable provisions of chapter 28-32. At the hearing the records of the commissioner may be introduced and shall establish

prima facie the contents thereof without further foundation. Notice of the opportunity for hearing and of the decision and the resulting order of the commissioner shall be sufficient if mailed by regular mail to the licensee's address on file with the commissioner pursuant to section 39-06-20 39-06-33. For the purposes of this chapter, the licensing authority may also receive and act on reports of traffic offense convictions forwarded by federal, military, and tribal courts in this state.

SECTION 3. AMENDMENT. Section 39-16-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-02. Rules and regulations - Judicial review Notice of proposed suspension. The commissioner shall have the powers and perform the duties imposed upon him by this chapter and may make rules and regulations necessary therefor and shall provide for hearings upon request of any person aggrieved by his final orders under this chapter. Any person aggrieved by a final order of the commissioner under this chapter may review such order by appeal; the laws of this state providing for appeals from orders of administrative agencies shall be applicable for that purpose. Notice of a proposed suspension under this chapter must be given under section 39-06-33.

* SECTION 4. REPEAL. Section 39-06-39 of the North Dakota Century Code and section 39-06-33.1 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

* NOTE: Section 39-06-33.1 was also repealed by section 16 of Senate Bill No. 2468, chapter 460.

CHAPTER 462

HOUSE BILL NO. 1173
(Committee on Transportation)
(At the request of the Highway Department)

MULTIPLE OPERATOR'S LICENSE SUSPENSIONS

AN ACT to amend and reenact section 39-06-37 of the North Dakota Century Code, relating to the duration of multiple driver's license suspensions or revocations for separate violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-06-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-37. Surrender and return of license - Duration of multiple suspensions and revocations for separate violations.

1. The commissioner upon canceling, suspending, or revoking a license shall require that such license shall be surrendered to and be retained by the commissioner.
2. If any person fails immediately to return to the commissioner any license or permit which has been canceled, suspended, or revoked, the order of the commissioner shall authorize any highway patrolman or peace officer to secure possession thereof and return the same to the commissioner. A suspension, revocation, or cancellation ordered under this title shall be deemed to have commenced when the order is delivered to the licensee at his address of record in the department pursuant to section 39-06-20. Constructive delivery under this section shall be considered as occurring forty-eight hours after the order is mailed to the person by regular mail.
3. Unless otherwise specifically provided in this title, any suspension, revocation, cancellation, or denial of licensing ordered under any provision of this title must be in addition to, and run consecutive to, any other or existing suspension, revocation, cancellation, or denial of licensing ordered for a separate violation.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 39-06-37 was also amended by section 11 of House Bill No. 1228, chapter 458.

CHAPTER 463

SENATE BILL NO. 2202
 (Committee on Transportation)
 (At the request of the Governor)

SPEED LIMITS

AN ACT to create and enact a new subsection to section 39-06.1-06, a new paragraph to subdivision a of subsection 3 of section 39-06.1-10, and a new subdivision to subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to highway speed limits and sanctions for violation of highway speed limits; to amend and reenact subsection 3 of section 39-06.1-06, paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10, and subdivision f of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to sanctions for violation of speed limits; to provide a penalty; to provide a contingent effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-06.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~For~~ Except as provided in section 2 of this Act, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5	\$ 5
6 - 10	\$ 5 plus \$1/each mph over 5 mph over limit
11 - 15	\$ 10 plus \$1/each mph over 10 mph over limit
16 - 20	\$ 15 plus \$2/each mph over 15 mph over limit
21 - 25	\$ 25 plus \$3/each mph over 20 mph over limit
26 - 35	\$ 40 plus \$3/each mph over 25 mph over limit
36 - 45	\$ 70 plus \$3/each mph over 35 mph over limit
46 +	\$100 plus \$5/each mph over 45 mph over limit

SECTION 2. A new subsection to section 39-06.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as posted and designated by the commissioner pursuant to section 6 of this Act, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

<u>Miles per hour over lawful speed limit</u>	<u>Fee</u>
1 - 5	\$ 10 plus \$1/each mph over limit
6 - 10	\$ 15 plus \$2/each mph over 5 mph over limit
11 - 15	\$ 25 plus \$3/each mph over 10 mph over limit
16 - 25	\$ 40 plus \$3/each mph over 15 mph over limit
26 - 35	\$ 70 plus \$3/each mph over 25 mph over limit
36 +	\$100 plus \$5/each mph over 35 mph over limit

* SECTION 3. AMENDMENT. Paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

(33) Except as provided in paragraph 34 of subdivision a of subsection 3 of section 39-06.1-10 and in section 4 of this Act, operating a motor vehicle in excess of speed limit in violation of section 39-09-02, or equivalent ordinance

16 - 20 mph over limit	3 points
21 - 25 mph over limit	4 points
26 - 35 mph over limit	6 points
36 - 45 mph over limit	8 points
46 + mph over limit	12 points

* SECTION 4. A new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as posted and designated by the commissioner pursuant to section 6 of this Act, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

<u>Miles per hour over lawful speed limit</u>	<u>Points</u>
6 - 10	1
11 - 15	4
16 - 25	7

* NOTE: Subsection 3 of section 39-06.1-10 was also amended by section 1 of House Bill No. 1068, chapter 468, by section 2 of House Bill No. 1439, chapter 466, by sections 1 and 2 of House Bill No. 1613, chapter 467, by section 2 of Senate Bill No. 2060, chapter 465, and by section 2 of Senate Bill No. 2329, chapter 464.

26 - 35	10
36 +	12

* SECTION 5. AMENDMENT. Subdivision f of subsection 1 of section 39-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

f. Fifty-five miles [88.51 kilometers] an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions, and except as provided in section 6 of this Act.

* SECTION 6. A new subdivision to subsection 1 of section 39-09-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

If a speed higher than fifty-five miles [88.51 kilometers] an hour is permitted under federal law without loss of federal funds to this state, and unless otherwise permitted, restricted, or required by conditions, any higher speed so permitted and so designated and posted by the commissioner.

SECTION 7. CONTINGENT EFFECTIVE DATE. This Act becomes effective on the date the governor certifies to the secretary of state and to the highway commissioner that the federal restrictions on speed limits exceeding fifty-five miles per hour are no longer in effect, but only if that day is before July 1, 1989.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 7, 1987
 Filed April 7, 1987

* NOTE: Subsection 1 of section 39-09-02 was also amended by sections 1 and 2 of House Bill No. 1363, chapter 472.

39-21-01. When lighted lamps are required --Penalty. Every vehicle upon a highway within this state at any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise, and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet [304.8 meters] ahead ~~shall~~ must display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles. Stop lights, turn signals, and other signaling devices ~~shall~~ must be lighted as prescribed for the use of such devices. Any person who violates the provisions of this section shall be assessed a fee of five dollars for each violation.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 465

SENATE BILL NO. 2060
(Legislative Council)
(Interim Judiciary Committee)

MOTOR VEHICLE MODIFICATION PENALTIES

AN ACT to amend and reenact section 39-06.1-09 and subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to the penalty for modification of a motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-06.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-09. "Moving violation" defined. For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-08-09; 39-08-18; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except sections 39-21-01, 39-21-44, 39-21-45.1, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

** SECTION 2. AMENDMENT. Subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Points shall be assigned and accumulated on the basis of the following schedule:

a. Noncriminal Violations	
Noncriminal Adjudication	
or Admission of:	
(1) Overtime and double parking in violation of city ordinances	Points Assigned: 0 points
(2) Failure to display license plates	1 point

* NOTE: Section 39-06.1-09 was also amended by section 1 of House Bill No. 1439, chapter 466, and by section 1 of Senate Bill No. 2329, chapter 464.

** NOTE: Subsection 3 of section 39-06.1-10 was also amended by section 1 of House Bill No. 1068, chapter 468, by section 2 of House Bill No. 1439, chapter 466, by sections 1 and 2 of House Bill No. 1613, chapter 467, by sections 3 and 4 of Senate Bill No. 2202, chapter 463, and by section 2 of Senate Bill No. 2329, chapter 464.

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| (3) | Permitting unauthorized minor to drive | 2 points |
| (4) | Permitting unauthorized person to drive | 2 points |
| (5) | Unlawful stopping, standing, or parking on open highway in violation of section 39-10-47 | 2 points |
| (6) | Unlawful parking in prohibited place | 1 point |
| (7) | Leaving motor vehicle improperly unattended on an open highway | 1 point |
| (8) | Opening or leaving motor vehicle doors open when unsafe to do so | 1 point |
| (9) | <u>Knowingly</u> Except as provided in section 39-21-45.1, knowingly drove with defective, nonexistent, or unlawful equipment in violation of subsection 1 of section 39-21-46, or equivalent ordinances | 2 points |
| (10) | Careless driving in violation of section 39-09-01, or equivalent ordinance | 6 points |
| (11) | Repealed by S.L. 1981, ch. 389, § 4- | |
| (12) | Violating or exceeding restrictions contained in a restricted certificate issued pursuant to section 39-06.1-03 | 4 points |
| (13) | Fleeing in motor vehicle from law enforcement officers in motor vehicle when such action constitutes a specific offense under statute or ordinance | 10 points |
| (14) | Racing or drag racing motor vehicles in violation of section 39-08-03.1, or equivalent ordinance | 10 points |
| (15) | Exhibition driving in violation of section 39-08-03.1, or equivalent ordinance | 3 points |
| (16) | Failing to yield right of way in violation of section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, or 39-10-44, or | 2 points |

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| (17) | equivalent ordinances
Disobeying an official
traffic-control device
in violation of section
39-10-04, 39-10-05,
or 39-10-07, or
equivalent ordinances | 2 points |
| (18) | Driving on wrong side of
road in violation of
section 39-10-08,
39-10-14, or 39-10-16, or
equivalent ordinances | 2 points |
| (19) | Failing to dim headlights
in violation of section
39-21-21, or equivalent
ordinance | 1 point |
| (20) | Failing to stop at railroad
crossing in violation of
section 39-10-41 or
39-10-42, or equivalent
ordinances | 1 point |
| (21) | Knowingly drove with
defective brakes in
violation of section
39-21-32, or 39-21-33, or
equivalent ordinances | 2 points |
| (22) | Disregarding the lawful
commands of a police
officer in violation of
section 39-10-02, or
equivalent ordinance | 2 points |
| (23) | Overtaking where prohibited
or in an unsafe manner in
violation of section
39-10-11, 39-10-12,
39-10-13, or 39-10-15, or
equivalent ordinances | 2 points |
| (24) | Overtaking and passing a
schoolbus in violation of
section 39-10-46, or
equivalent ordinance | 6 points |
| (25) | Repealed by S.L. 1985,
ch. 430, § 4 | |
| (26) | Operating a motor vehicle
without a license in
violation of section
39-06-01, or equivalent
ordinance | 4 points |
| (27) | Improperly operating or
unlawfully carrying
passengers or packages on
a motorcycle in violation
of section 39-10.2-02,
or equivalent ordinance | 2 points |

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| (28) | Improperly operating a motorcycle in laned traffic in violation of section 39-10.2-03, or equivalent ordinance | 2 points |
| (29) | Clinging to other vehicles while riding a motorcycle in violation of section 39-10.2-04, or equivalent ordinance | 4 points |
| (30) | Carrying a passenger on a motorcycle not equipped with passenger footrests in violation of section 39-10.2-05, or equivalent ordinance | 2 points |
| (31) | Operating a motorcycle without protective headgear in violation of subsection 1 of section 39-10.2-06, or equivalent ordinance | 2 points |
| (32) | Failing to use the care required in section 39-09-01.1, or equivalent ordinance | 2 points |
| (33) | Except as provided in paragraph 34 of subdivision a of subsection 3 of section 39-06.1-10, operating a motor vehicle in excess of speed limit in violation of section 39-09-02, or equivalent ordinance | |
| | 16 - 20 mph over limit | 3 points |
| | 21 - 25 mph over limit | 4 points |
| | 26 - 35 mph over limit | 6 points |
| | 36 - 45 mph over limit | 8 points |
| | 46 + mph over limit | 12 points |
| (34) | Within city limits on a noncontrolled access highway, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance | |
| | 6 - 10 mph over limit | 1 point |
| | 11 - 15 mph over limit | 2 points |
| | 16 - 20 mph over limit | 3 points |
| | 21 - 25 mph over limit | 4 points |
| | 26 - 35 mph over limit | 6 points |
| | 36 - 45 mph over limit | 8 points |
| | 46 + mph over limit | 12 points |

b. Criminal Violations

- | Conviction of: | Points Assigned: |
|---|------------------|
| (1) Reckless driving, in violation of section 39-08-03, or equivalent | 8 points |

- ordinance
- (2) Aggravated reckless driving, in violation of section 39-08-03, or equivalent ordinance 12 points
- (3) Leaving the scene of an accident involving property damage in violation of section 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances 14 points
- (4) Leaving the scene of an accident involving personal injury or death in violation of section 39-08-04, or equivalent ordinance 18 points
- (5) Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has not within the five years preceding the violation previously violated section 39-08-01, or equivalent ordinance 24 points
- (6) Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has within the five years preceding the violation previously violated section 39-08-01, or equivalent ordinance 63 points
- (7) Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has within the five years preceding the violation at least twice previously violated section 115 points

- 39-08-01 or equivalent ordinance
- (8) Violating restrictions in a restricted license issued under section 39-06-17 and relating to the use of eyeglasses or contact lenses while driving 3 points
- (9) Violating any restrictions other than those listed in paragraph 8 of this subdivision, contained in a restricted license issued under section 39-06-17 or 39-06.1-11 4 points
- (10) Operating a motor vehicle without liability insurance, in violation of section 39-08-20 6 points
- (11) Knowingly drove a modified motor vehicle in violation of section 39-21-45.1, or equivalent ordinance 2 points

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 466

HOUSE BILL NO. 1439
(Representatives O'Connell, Dorso, O. Hanson)
(Senators Hilken, Richard)

ACCIDENT NOTICE

AN ACT to create and enact a new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to entries against driving records; to amend and reenact sections 39-06.1-09 and 39-08-09 of the North Dakota Century Code, relating to the definition of a moving violation and immediate notice of an accident; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-06.1-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-09. "Moving violation" defined. For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; ~~39-08-09~~; 39-08-18; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except sections 39-21-01, 39-21-44, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

** SECTION 2. A new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Driving in violation 6 points
of section 39-08-09

SECTION 3. AMENDMENT. Section 39-08-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 39-06.1-09 was also amended by section 1 of Senate Bill No. 2060, chapter 465, and by section 1 of Senate Bill No. 2329, chapter 464.

** NOTE: Subsection 3 of section 39-06.1-10 was also amended by section 1 of House Bill No. 1068, chapter 468, by sections 1 and 2 of House Bill No. 1613, chapter 467, by section 2 of Senate Bill No. 2060, chapter 465, by sections 3 and 4 of Senate Bill No. 2202, chapter 463, and by section 2 of Senate Bill No. 2329, chapter 464.

39-08-09. Immediate notice of accident - Penalty. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of at least ~~six~~ **hundred one thousand** dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. Any person who violates this section must be assessed a fine of fifty dollars. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five days of the accident the driver shall supply that information to the driver's license division in the form the division requires.

The commissioner may suspend the license or permit to drive and any nonresident operating privileges of any person failing to comply with the duties as provided in sections 39-08-06 through 39-08-09 until those duties have been fulfilled, and the commissioner may extend the suspension not to exceed thirty days.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 467

HOUSE BILL NO. 1613
(Kent)

MOTOR VEHICLE LIABILITY INSURANCE PENALTY

AN ACT to create and enact a new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to driver's license penalty point assessments for driving without liability insurance after involvement in an accident; and to amend and reenact paragraph 10 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to driver's license penalty point assessments for driving without liability insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Paragraph 10 of subdivision b of subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

(10) Operating Except as provided in section 2 of this Act, 6 points
operating a motor vehicle
without liability
insurance, in violation of
section 39-08-20

* SECTION 2. A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Operating a motor vehicle without liability insurance, in violation of section 39-08-20, if the violation was discovered as the result of investigation of an accident in which the driver is the owner 14 points

Approved March 27, 1987
Filed March 30, 1987

* NOTE: Subsection 3 of section 39-06.1-10 was also amended by section 1 of House Bill No. 1068, chapter 468, by section 2 of House Bill No. 1439, chapter 466, by section 2 of Senate Bill No. 2060, chapter 465, by sections 3 and 4 of Senate Bill No. 2202, chapter 463, and by section 2 of Senate Bill No. 2329, chapter 464.

CHAPTER 468

HOUSE BILL NO. 1068
(Winkelman)

FLEEING A PEACE OFFICER PENALTY

AN ACT to amend and reenact paragraph 13 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to drivers license penalty points for fleeing a peace officer; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Paragraph 13 of subdivision a of subsection 3 of section 39-06.1-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- (13) Fleeing in motor vehicle ~~10~~ 24 points
~~from law enforcement~~
~~officers in motor vehicle~~
~~when such action constitutes~~
~~a specific offense under~~
~~statute or a peace~~
~~officer in violation~~
~~of section 39-10-71 or~~
~~equivalent ordinance~~

Approved April 7, 1987
Filed April 9, 1987

- * NOTE: Subsection 3 of section 39-06.1-10 was also amended by section 2 of House Bill No. 1439, chapter 466, by sections 1 and 2 of House Bill No. 1613, chapter 467, by section 2 of Senate Bill No. 2060, chapter 465, by sections 3 and 4 of Senate Bill No. 2202, chapter 463, and by section 2 of Senate Bill No. 2329, chapter 464.

CHAPTER 469

SENATE BILL NO. 2201
(Committee on Transportation)
(At the request of the Highway Department)

DRIVER TRAINING COURSE COMPLETION

AN ACT to amend and reenact subsection 2 of section 39-06.1-13 of the North Dakota Century Code, relating to reduction of point totals on driving records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The point total shown on a licensee's driving record shall, during any twelve-month period, be reduced by three points when the licensee mails or delivers a certificate to the licensing authority indicating successful completion of ~~eight hours of~~ instruction in a driver training course approved by the licensing authority. Successful completion of ~~eight or more hours of~~ instruction shall be certified to by the instructor ~~or instructors~~ of the driver training course. The reduction in points authorized by this subsection shall only be from a point total accumulated prior to completion of the necessary hours of driver training instruction, and shall not exceed nine points during any three-year period commencing on the date of entry of the last points against the person's driving record. If on the date the licensing authority receives the certificate of completion of the driver training course from the licensee, that licensee's driving record contains twelve or more points, the point reduction authorized by this subsection shall be applied only after the period of suspension required by the number of points then on the driver's record has been served.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 470

SENATE BILL NO. 2335
(Nalewaja, Adams)

TRAFFIC OFFENSE RELEASES

AN ACT to amend and reenact section 39-07-09 of the North Dakota Century Code, relating to traffic offenses for which a person may be released upon promise to appear.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-09. Offenses under which person halted may not be entitled to release upon promise to appear. The provisions of section Section 39-07-07 shall does not apply to a person if:

1. The halting officer ~~shall have~~ has good reason to believe ~~such the~~ person guilty of any felony or ~~when such if the~~ person is halted and charged with ~~any of the offenses an~~ offense listed in section 39-06.1-05, ~~except reckless~~ driving but not listed in subsection 2; or
2. The halting officer, acting within ~~his~~ the officer's discretion, ~~deems determines that~~ it is inadvisable to release ~~such the~~ person upon ~~his~~ a promise to appear ~~when,~~ and if the person has been halted and charged with ~~either~~ any of the following offenses:
 - a. Reckless driving.
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
 - c. Driving while license or driving privilege is suspended or revoked for violation of section 39-06-42, or an equivalent ordinance.
 - d. Operating a modified vehicle.

e. Driving without liability insurance in violation of section 39-08-20.

The halting officer forthwith shall take any person not released upon ~~his~~ a promise to appear before the nearest or most accessible magistrate.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 471

HOUSE BILL NO. 1419
(Sorensen)

EXHIBITION DRIVING AND DRAG RACING

AN ACT to amend and reenact subsection 1 of section 39-08-03.1 of the North Dakota Century Code, relating to the amount of statutory fees for exhibition driving and drag racing; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-08-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No person shall engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor shall any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section ~~shall~~ by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of forty fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 472

HOUSE BILL NO. 1363
(Representatives Whalen, Thompson)
(Senators Freborg, D. Meyer)

MOTOR VEHICLE SPEED LIMITS

AN ACT to create and enact a new subdivision to subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to motor vehicle speed limits; and to amend and reenact subdivision f of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to motor vehicle speed limits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision f of subsection 1 of section 39-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- f. Fifty-five miles [88.51 kilometers] an hour under other circumstances, unless a higher speed is permitted under subsection 2 of this Act, and unless otherwise permitted, restricted, or required by conditions, fifty-five miles [88.51 kilometers] an hour.

* SECTION 2. A new subdivision to subsection 1 of section 39-09-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Under other circumstances, if a speed higher than fifty-five miles [88.51 kilometers] an hour is permitted under federal law without loss of federal funds to this state, and unless otherwise permitted, restricted, or required by conditions, any higher speed so permitted.

Approved March 27, 1987
Filed March 30, 1987

* NOTE: Subsection 1 of section 39-09-02 was also amended by sections 5 and 6 of Senate Bill No. 2202, chapter 463.

CHAPTER 473

HOUSE BILL NO. 1389
(Belter, V. Olson, C. Williams)

SCHOOLBUS SAFETY

AN ACT to amend and reenact subsections 1 and 4 of section 39-10-46, subsection 2 of section 39-21-18, and sections 39-21-27 and 39-21-27.1 of the North Dakota Century Code, relating to safety requirements for schoolbuses; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 4 of section 39-10-46 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The driver of a vehicle meeting or overtaking from either direction any schoolbus stopped on the highway shall stop the vehicle before reaching ~~such~~ the schoolbus when there is in operation on ~~said~~ the schoolbus the flashing red lights, the stop sign on the control arm, or the safety strobe lights specified in section 39-21-18, and ~~said~~ the driver shall not proceed until such schoolbus resumes motion or he is signaled by the schoolbus driver to proceed or the flashing red lights, the stop sign on the control arm, and the safety strobe lights are no longer actuated.
4. Every schoolbus ~~shall~~ may be equipped with safety strobe lights and must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of section 39-21-18, which may only be actuated by the driver of ~~said the~~ schoolbus whenever, but only whenever, such the vehicle is stopped on the highway ~~for the purpose of receiving or discharging to receive or discharge~~ schoolchildren. A schoolbus driver ~~shall~~ may not actuate ~~said the stop sign or the~~ special visual signals:
 - a. On city streets on which the receiving or discharging of schoolchildren is prohibited by ordinance;

- b. At intersections or other places where traffic is controlled by traffic-control signals or police officers; or
- c. In designated schoolbus loading areas where the bus is entirely off the roadway.

SECTION 2. AMENDMENT. Subsection 2 of section 39-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 2. Every schoolbus, except small vehicles such as automobiles, station wagons, suburbans, and van-type vehicles having a seating capacity of up to and including sixteen pupils, and every authorized emergency vehicle ~~shall~~ may be equipped with safety strobe lights and must, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal:

- a. Signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred feet [152.4 meters] in normal sunlight; and

- b. A stop sign on a control arm that can be activated by the busdriver. The stop sign on the control arm must be located on the left side of the bus; be equipped with a flashing red light; and when activated, extend out from the bus at approximately a ninety degree angle.

SECTION 3. AMENDMENT. Section 39-21-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-27. Special lighting and warning equipment on schoolbuses.

- 1. The superintendent of public instruction in cooperation with the registrar is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices, including the stop sign on a control arm specified in section 39-21-18, to be carried by schoolbuses and other vehicles transporting children to school for compensation, consistent with the provisions of this chapter, but supplemental thereto. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

2. It shall be unlawful to operate any flashing warning signal light or the stop sign on the control arm specified in section 39-21-18 on any schoolbus except when any said schoolbus is stopped on a highway for the purpose of permitting schoolchildren to board or alight from said schoolbus.

SECTION 4. AMENDMENT. Section 39-21-27.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-27.1. Schoolbus standards - Equipment and color regulations. Only motor vehicles which have been designed by the manufacturer for the purpose of carrying passengers shall be used as schoolbuses. The superintendent of public instruction may adopt reasonable regulations, consistent with the provisions of this chapter, relating to the construction, design, operation, equipment, and color of schoolbuses and shall prepare and publish standards for North Dakota schoolbuses which shall set forth the regulations. The superintendent of public instruction may issue an order prohibiting the operation on public streets, highways, and elsewhere of any schoolbus which does not comply with the regulations, and school districts operating buses which do not meet the regulations will not be eligible to receive state reimbursement for vehicular transportation. If a schoolbus is purchased for a purpose or purposes other than the public transport of schoolchildren, the purchaser shall change the color of the vehicle and deactivate or remove the warning signal lights and the stop sign on the control arm.

Highway patrolmen and all peace officers are authorized to make necessary investigations relating to compliance with the regulations adopted by the superintendent of public instruction and to make reports of their findings to the office of the superintendent of public instruction.

SECTION 5. APPLICATION. This Act does not require the installation of stop signs on control arms on schoolbuses in use before July 1, 1988.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 474

HOUSE BILL NO. 1400
(V. Olson, O'Connell, Belter)

STOPPING FOR SCHOOLBUSES

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to ownership of motor vehicles used in violation of duty to stop for certain schoolbuses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Permitting use of vehicle to violate section 39-10-46 prohibited - Penalty - Presumption of permission - Defense - Dual prosecution prohibited. The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 39-10-46. A person violating this provision is subject to a civil penalty of twenty dollars. If a motor vehicle is seen violating section 39-10-46, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 39-10-46, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 39-10-46. Violation of this section is not a lesser included offense of violation of section 39-10-46.

Approved March 19, 1987

Filed March 20, 1987

CHAPTER 475

HOUSE BILL NO. 1089
(O'Connell)FLEEING AN OFFICER — EXTRAORDINARY ROAD
USE FEES

AN ACT to amend and reenact sections 39-10-71 and 39-12-14.1 of the North Dakota Century Code, relating to fleeing or eluding a peace officer and settlement of extraordinary road use fee charges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-71 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10-71. Fleeing or attempting to elude a police peace officer. Any driver of a motor vehicle who willfully fails or refuses to bring his the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class A misdemeanor. The A signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be complies with this section if the signal is perceptible to the driver and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

SECTION 2. AMENDMENT. Section 39-12-14.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-14.1. Voluntary settlement of extraordinary road use fee charges.

Before the complaint is issued pursuant to section 39-12-14, the owner, his or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under section 39-12-17, plus any towing or storage costs. Any settlement, whether made by the owner, his or the owner's driver or agent, shall be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the authority having jurisdiction of the road whereon the violation occurred. The extraordinary road use fees shall be remitted to the state treasurer to be credited to the highway fund.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 476

HOUSE BILL NO. 1198
(Committee on Transportation)
(At the request of the Highway Department)

MOTOR VEHICLE SIZE AND WEIGHT PERMITS

AN ACT to create and enact a new section to chapter 39-12 and a new subdivision to subsection 3 of section 39-12-04 of the North Dakota Century Code, relating to the weight limitations for vehicles on non-interstate highways and trailer length limitations; and to amend and reenact sections 39-12-02 and 39-12-05 of the North Dakota Century Code, relating to fees for special permits for vehicles of excessive size and weight and vehicle weights on the interstate system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-12-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every such permit may designate the route to be traversed, and may contain any other restrictions or conditions deemed necessary by the body granting such permit. Every such permit shall be carried in the vehicle to which it refers and shall be opened to inspection by any peace officer or agent of the superintendent of highway patrol. It shall be a violation of the provisions of this chapter for any person to violate any of the terms or conditions of such special permit. All permits for the movement of excessive size and weight on state highways shall be single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.

An appropriate charge shall be made for each permit and all funds collected hereunder by the highway patrol shall be deposited

in the state highway fund and are hereby appropriated for use in the construction and maintenance of highways and operating expenses of the highway department. For each permit for the movement of a mobile home or modular unit, the fee is ~~five~~ ten dollars. Official or publicly owned vehicles shall not be required to pay charges for permits. The director of tax equalization of the county of destination shall be furnished a copy of the permit for the movement of an overdimensional mobile home.

SECTION 2. A new subdivision to subsection 3 of section 39-12-04 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The length of a trailer or semi-trailer may not exceed fifty-three feet [16.15 meters] except that trailers and semi-trailers titled and registered in North Dakota prior to July 1, 1987, may not exceed a length of sixty feet [18.29 meters].

SECTION 3. AMENDMENT. Section 39-12-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-12-05. Weight limitations for vehicles on interstate system. A person may not operate on a highway which is part of the interstate system any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand

pounds [15,422.14 kilograms] each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. On all state highways and unless otherwise posted, the gross weight may not exceed one hundred five thousand five hundred pounds [47,854.00 kilograms]. On the interstate system and on all other highways the gross weight may not exceed eighty thousand pounds [36,287.39 kilograms] except that highways under the jurisdiction of local authorities may be designated by them for gross weights not over one hundred five thousand five hundred pounds [47,854.00 kilograms]. The gross weight limitations do not apply to equipment that the state highway patrol and the commissioner approve for exemption. The exemption may not exceed eighty thousand pounds [36,287.39 kilograms] on the interstate system and one hundred five thousand five hundred pounds [47,854.00 kilograms] on all other highways. For every vehicle approved for exemption the highway patrol shall issue a nontransferable certificate of exemption valid for one year. The highway patrol may charge an administrative fee for the certificate.

The commissioner, and local authorities, as to the highways under their respective jurisdictions, may issue certificates authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The certificates may not provide for a gross weight in excess of eighty thousand pounds [36,287.39 kilograms] on the interstate system, nor a gross weight in excess of one hundred five thousand five hundred pounds [47,854.00 kilograms] on any other highway. The certificates shall provide only for the movement of agricultural products from the field to the initial storage site, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the certificates and direct how they shall be issued. All certificate fees collected by the highway patrol shall be deposited in the highway distribution fund.

SECTION 4. A new section to chapter 39-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Weight limitations for vehicles on highways other than the interstate system. A person may not operate on a highway, which is not part of the interstate system, any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On

axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21,772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.

2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = \frac{500 (LN + 12N + 36)}{N-1}$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47,854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36,287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47,854.00 kilograms].

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the state highway commissioner and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47,854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The commissioner, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47,854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the commissioner.

CHAPTER 477

HOUSE BILL NO. 1267
(Gerntholz, Dorso, Knell)

MOTOR VEHICLE LENGTH REGULATION

AN ACT to amend and reenact subdivision d of subsection 3 of section 39-12-04 of the North Dakota Century Code, relating to allowable lengths of certain motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 3 of section 39-12-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the commissioner and local authorities as to the highways under their respective jurisdictions and shall not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the commissioner that are consistent with public highway safety.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 478

HOUSE BILL NO. 1598
(Representatives Haugland, Peterson, Wentz)
(Senator Stenehjem)

SOLID WASTE TRANSPORTATION

AN ACT to amend and reenact subsection 2 of section 39-12-05 of the North Dakota Century Code, or in the alternative to amend and reenact subsection 4 to the new section to chapter 39-12 of the North Dakota Century Code as created by section 4 of House Bill No. 1198, as approved by the fiftieth legislative assembly, relating to weight limitations on motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1198 does not become effective, subsection 2 of section 39-12-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \frac{(LN + 12N + 36)}{N-1}$$

where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds [15,422.14 kilograms] each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. On all state highways and unless otherwise posted, the gross weight may not exceed one hundred five thousand five hundred pounds [47,854.00 kilograms]. On the interstate system and on all other highways the gross weight may not exceed eighty thousand pounds [36,287.39 kilograms] except that highways under the jurisdiction of local authorities may be designated by

them for gross weights not over one hundred five thousand five hundred pounds [47,854.00 kilograms]. The gross weight limitations do not apply to equipment that the state highway patrol and the commissioner approve for exemption. The exemption may not exceed eighty thousand pounds [36,287.39 kilograms] on the interstate system and one hundred five thousand five hundred pounds [47,854.00 kilograms] on all other highways. For every vehicle approved for exemption the highway patrol shall issue a nontransferable certificate of exemption valid for one year. The highway patrol may charge an administrative fee for the certificate.

The commissioner, and local authorities, as to the highways under their respective jurisdictions, may issue certificates authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The certificates may not provide for a gross weight in excess of eighty thousand pounds [36,287.39 kilograms] on the interstate system, nor a gross weight in excess of one hundred five thousand five hundred pounds [47,854.00 kilograms] on any other highway. The certificates shall provide only for the movement of agricultural products from the field to the initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the certificates and direct how they shall be issued. All certificate fees collected by the highway patrol shall be deposited in the highway distribution fund.

SECTION 2. AMENDMENT. If House Bill No. 1198 becomes effective, subsection 4 to the new section to chapter 39-12 of the North Dakota Century Code, as created by section 4 of House Bill No. 1198, is hereby amended and reenacted to read as follows:

4. The commissioner, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47,854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the commissioner.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 479

HOUSE BILL NO. 1214
(Committee on Transportation)
(At the request of the Highway Department)

MOTOR VEHICLE INSURANCE

AN ACT to amend and reenact subsection 1 of section 39-16-05, subsection 1 of section 39-16.1-09, subsection 1 of section 39-16.1-10, and section 39-16.1-12 of the North Dakota Century Code, relating to proof of financial responsibility after an accident, proof of motor vehicle insurance coverage, filing certificates of insurance by an insurance carrier, notice of insurance coverage cancellation to the highway commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-16-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner, within sixty days after the receipt of a report of a motor vehicle accident within this state for which a driver is required to file a report under section 39-08-09, shall suspend the license or nonresident operating privilege of each driver of each vehicle in any manner involved in the accident. ~~if the driver is a nonresident, the commissioner shall suspend the driver's privilege of operating a motor vehicle within this state~~ unless the driver deposits security as provided in sections 39-16-09 and 39-16-10 in a sum which is sufficient in the judgment of the commissioner to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against such driver. Notice of suspension and opportunity for hearing must be sent by the commissioner to the driver not less than ten days prior to the effective date of the suspension and must state the amount required as security. However, if a driver, either resident or nonresident, involved in the accident purchases an insurance policy with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the commissioner, that driver may retain the license or privilege until the driver has accepted

responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If the driver is found negligent or responsible for the accident, in whole or in part, the license or privilege must be suspended and will not be returned until the driver complies with this chapter.

SECTION 2. AMENDMENT. Subsection 1 of section 39-16.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Proof of financial responsibility may be furnished by filing with the commissioner the written or electronically transmitted certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is an operator's policy.

SECTION 3. AMENDMENT. Subsection 1 of section 39-16.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the commissioner a written or electronically transmitted certificate ~~or certificates~~ of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this chapter, and the commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:
 - a. Said insurance carrier shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.
 - b. Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

SECTION 4. AMENDMENT. Section 39-16.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-12. Notice of ~~proposed~~ cancellation of policy by insurer. When an insurance carrier has certified a motor vehicle liability policy under sections 39-16.1-09 and 39-16.1-10, the insurance ~~so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the commissioner; carrier shall notify the commissioner no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy;~~ except that ~~such~~ a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 480

SENATE BILL NO. 2261
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

VEHICLE DEALER LICENSE FEES

AN ACT to amend and reenact sections 39-18-01, 39-22.1-01, and 39-22.3-01 of the North Dakota Century Code, relating to licensing fees for mobile home, trailer, and motorcycle dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-18-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-18-01. Mobile home dealer's license - Fees - Dealer's plates. No person, partnership, or corporation shall engage in the business of buying, selling, or exchanging of mobile homes or travel trailers, or advertise or hold himself or itself out to the public as being in the business of buying, selling, or exchanging of mobile homes or travel trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license shall be made to the motor vehicle department on such forms as the department shall prescribe and furnish, and such application shall be accompanied by an annual fee of ~~twenty-five~~ thirty-five dollars. Such dealer's license shall expire on December thirty-first of each year, and application for renewal of such dealer's license shall be made on or before the expiration of the current dealer's license.

A mobile home dealer's license shall be issued only to those who will maintain a permanent office and place of business, and an adequate service department, during the licensing year, and will abide by all the provisions of law pertaining to mobile home dealers.

In addition, the dealer shall maintain his business records in one central location.

Upon the payment of a fee of ~~five~~ ten dollars for each plate, the department shall register and issue dealer's license plates for use on any mobile homes owned by the licensed dealer, and such mobile homes bearing such dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by such dealer, his agents and servants, during the year of such registration. Such dealer's license plates shall expire on December thirty-first of each year.

The term "mobile home" as used in this chapter shall include and shall have the same meaning as "housetrailer", and both terms shall have the meaning prescribed in subsection 74 of section 39-01-01. The term "travel trailer" as used in this chapter has the meaning as prescribed in section 39-01-01.

Any mobile home dealer licensed under the provisions of this chapter may sell house cars without being licensed under the provisions of chapter 39-22. A mobile home dealer plate displayed on a house car must be displayed on the rear of the vehicle.

SECTION 2. AMENDMENT. Section 39-22.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22.1-01. Trailer dealer's license - Fees - Plates. No person, partnership, or corporation shall engage in the business of buying, selling, or exchanging of trailers, or advertise or hold itself out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license shall be made to the registrar of motor vehicles on such forms as the registrar shall prescribe and furnish, and such application shall be accompanied by an annual fee of ~~fifteen~~ twenty dollars. Such dealer's license shall expire on December thirty-first of each year, and application for renewal of such dealer's license shall be made on or before the expiration of the current dealer's license.

A trailer dealer's license shall be issued only to those who will maintain a permanent office and place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain his business records in one central location.

Upon the payment of a fee of ~~five~~ ten dollars for each plate, the registrar shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and such trailers bearing such dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by such dealer, the dealer's agents or representatives, during the year of such registration. Such dealer's license plates shall expire on December thirty-first of each year.

The term "trailer" as used in this chapter shall not include those trailers exempt from registration in chapter 39-04.

SECTION 3. AMENDMENT. Section 39-22.3-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22.3-01. Motorcycle dealer's license - Fees - Additional number plates. It shall be unlawful for any person, partnership, or corporation to engage in the business of buying, selling, or exchanging of motorcycles without possessing a current motorcycle dealer's license. No person, partnership, or corporation may advertise or hold out to the public as engaging in the buying, selling, or exchanging of motorcycles for resale without possession of a current motorcycle dealer's license. The motorcycle dealer's license fee is twenty-five dollars per year and with which shall be issued one dealer's plate. Additional dealer's plates are ~~five~~ ten dollars each. A dealer plate may be displayed on any motorcycle owned by the dealer.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 481

SENATE BILL NO. 2472
(Senators Heinrich, D. Meyer, Thane)
(Representative Dorso)

TEMPORARY OPERATOR'S PERMITS

AN ACT to amend and reenact subsection 1 of section 39-20-03.1, subsections 1 and 2 of section 39-20-03.2, section 39-20-04, and subsection 1 of section 39-20-05 of the North Dakota Century Code, relating to temporary operator's permits and administrative hearings for alcohol-related traffic offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-20-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next ~~twenty~~ twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny driving privileges in this state.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 39-20-03.2 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for ~~twenty~~ twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit shall be signed and dated

by the officer and serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the blood alcohol concentration analysis showing the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight, shall mail the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for ~~twenty~~ twenty-five days from the date of mailing or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit shall be signed and dated by the officer.

* SECTION 3. AMENDMENT. Section 39-20-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none shall be given, but the law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next ~~twenty~~ twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The commissioner, upon the receipt of that person's operator's license and a sworn report of the law enforcement officer, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the

* NOTE: Section 39-20-04 was also amended by section 13 of Senate Bill No. 2468, chapter 460.

appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the commissioner shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the commissioner may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

1. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
2. Two years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
3. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 4. AMENDMENT. Subsection 1 of section 39-20-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the commissioner shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within ~~five~~ ten days after the date of issuance of the temporary operator's permit. The hearing must be held within ~~twenty~~ twenty-five days after the date of issuance of the temporary operator's permit, but the hearing officer may extend the hearing to within ~~thirty~~ thirty-five days after the issuance of the temporary operator's permit if good cause is shown. If the hearing date is extended beyond ~~twenty~~ twenty-five days from the issuance of the temporary operator's permit, the commissioner shall provide extended temporary operator's privileges to the date of the hearing. If no hearing is requested within the time limits in this section the expiration of the temporary operator's permit serves as the commissioner's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 482

SENATE BILL NO. 2328
(Satrom)

CHILD RESTRAINT DEVICES

AN ACT to amend and reenact section 39-21-41.2 of the North Dakota Century Code, relating to child restraint devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-41.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-41.2. Child restraint devices - Penalty - Evidence.

1. If a child, ~~not over two~~ under three years of age, is present in any passenger car that is operated by the child's parent or legal guardian motor vehicle, that passenger car motor vehicle must be equipped with at least one child restraint system for each such child ~~under two years~~. The child restraint system must ~~at least~~ meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the car motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. ~~if a~~ While the motor vehicle is moving, each child who is at least two and at most four of three to five years of age is present in a passenger car, unless properly secured who is in the motor vehicle must be in an approved child restraint system, the child must be or buckled in a seatbelt whenever the car is moving. Use of child restraint systems and seatbelts is not required in passenger cars manufactured before 1966 motor vehicles that have were not been equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle, this section does not apply.
2. Violation of this section is punishable by a fine not to exceed twenty dollars. The fine may be suspended on

showing proof of acquiring a child restraint system complying with this section within one month of the violation.

3. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 483

SENATE BILL NO. 2463
(Senators Keller, Freborg)
(Representatives Hamerlik, Wald)

STREET RODS

AN ACT to create and enact a new section to chapter 39-21 of the North Dakota Century Code, relating to exemption from equipment requirements for certain motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption for certain street rod motor vehicles. The provisions of this chapter or chapter 52-04-01 of the North Dakota Administrative Code relating to bumpers, tires, and fenders do not apply to street rod motor vehicles. However, a street rod must have all equipment, in operating condition, which was specifically required by law as a condition for its sale when it was first manufactured. A street rod is a modernized motor vehicle which was manufactured before 1949 by a recognized manufacturer and which retains the general appearance and original body configuration as manufactured or a motor vehicle designed and manufactured to resemble such a motor vehicle. A street rod may have improved modifications to the body, chassis, engine, brakes, power train, steering, and suspension systems either by modifying the original equipment or replacing original parts with fabricated parts or those taken from other existing vehicles. The registrar may adopt rules to implement this section.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 484

SENATE BILL NO. 2258
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE DEALER LICENSES

AN ACT to amend and reenact sections 39-22-02, 39-22-06, 39-22-08, 39-22-11, and 39-22-12 of the North Dakota Century Code, relating to the licensing of motor vehicle dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-22-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-02. Motor vehicle dealer's license - Fees - Additional number plates. It shall be unlawful for any person, partnership, or corporation to engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer's license. No person, partnership, or corporation shall advertise or hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer's license, or used motor vehicle dealer's license. The motor vehicle dealer's license fee is ~~twenty-five~~ fifty dollars per year and with which must be issued ~~one set of dealer's plates~~ dealer plate. ~~A second set of dealer's number plates shall be issued to the dealer upon payment of an additional fee of twenty-five dollars.~~ Additional dealer's number plates shall be issued to the dealer upon payment of a fee of ~~ten~~ fifteen dollars ~~per set each~~. Such number plates may be used on any vehicle owned by the dealership and used in the direct functions of demonstrating, buying, or selling vehicles. These may not include service vehicles or vehicles used in other functions of the business. In addition to the dealer's license plates, the registrar of motor vehicles may issue to any dealer holding a regular dealer's license plate, an in-transit license plate for a fee of ~~two~~ three dollars per plate. Such ~~plates in-transit plate~~ plates may be used on vehicles in lieu of dealer's plates while a motor vehicle is in transit from its place of manufacture or any other place, to the dealer or in transit from the dealer, by a direct route, to another destination. Any dealer plate or in-transit plate displayed on a vehicle must be displayed on the rear of the vehicle. Special

utility plates may be issued by the registrar to any dealer, for a fee of ~~two~~ three dollars, which special utility plate shall be used only on a vehicle while it is being used by the dealership to which the plate is issued within a radius of ~~twenty-five~~ fifty miles [~~40.23~~ 80.47 kilometers] of the licensee's place of business.

No application shall be granted nor a license issued to anyone until or unless the applicant shall furnish proof satisfactory to the registrar of the fact that the applicant has, does, and will continue to maintain, in the case of a used motor vehicle dealer's license, an established place of business, and has facilities and equipment for the maintenance, servicing, and repair of motor vehicles. An established central place of business, when used in this sense, means a permanent or enclosed building or structure either owned, rented, or in fee or leased with a stated periodic rental, at which a permanent business of bartering, trading, and selling of motor vehicles, the repair, maintenance, and servicing of motor vehicles, and the storage of parts and accessories therefor, will be carried on as such in good faith and not for the purpose of evading this section, and at which place of business shall be kept and maintained the books, records of such business and the titles or other documents showing ownership of the vehicles, and files necessary to conduct the business at such place, and shall not mean a residence, tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. An established central place of business must have a telephone publicly listed in the name of the dealership, be open to the public during normal business hours, and be identified by a sign identifying the business, to the public, as a motor vehicle dealership. Said central place of business may consist of several buildings, or structures, but no building or structure constituting a part of said central place of business shall be located at a distance greater than one thousand feet [304.8 meters] from any other buildings or structures of said central place of business. If the license is granted hereunder, the licensee shall be permitted to use unimproved lots and premises for sales, storage, or display of motor vehicles. A nonrefundable fee of fifty dollars will be charged for each inspection and must accompany the initial application for new or used motor vehicle dealer's license.

Every dealer must have repair and service facilities at the central established place of business. The established place of business must be located within the state of North Dakota.

In the case of an application for a new motor vehicle dealer's license, the applicant shall furnish proof satisfactory to the registrar of the fact that the applicant has, does, and will continue to maintain all of the facilities described above applicable to a used motor vehicle dealer's license and in addition thereto, shall furnish proof satisfactory to the registrar of the fact that the applicant has a bona fide contract or franchise in effect with a manufacturer or distributor of the new motor vehicle or motor vehicles in which the dealer proposes to deal. A new motor vehicle dealer's license shall entitle the holder to deal in both

used motor vehicles and in those new motor vehicles only for which the dealer has a bona fide contract or franchise in effect with a manufacturer or distributor. A used motor vehicle dealer's license shall entitle the holder to deal in used motor vehicles only.

Whenever a motor vehicle dealer shall purchase or hold for sale a new motor vehicle for which the dealer does not have a bona fide contract or franchise in effect with a manufacturer or distributor, such new motor vehicle shall become, at the time of purchase or possession, subject to the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, and the motor vehicle excise tax provisions of chapter 57-40.3.

If the licensee desires to remove from the central established place of business occupied when the license is granted to a new location, the licensee shall first secure from the registrar of motor vehicles permission to do so. The licensee shall be required to furnish proof satisfactory to the registrar that the premises to which the licensee proposes to remove conform with the requirements hereinbefore set forth.

SECTION 2. AMENDMENT. Section 39-22-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-06. Motor vehicle lots - Location. A registered licensed dealer as described in this chapter may establish open motor vehicle lots as may be necessary in the conduct of his business in an area not further removed than three miles [4.83 kilometers] from the city limits of the town in which the dealer operates a licensed place of business. Such open lots must be identified as a part of licensed dealer's operation with a sign displaying the name of the licensed dealer.

SECTION 3. AMENDMENT. Section 39-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-08. Dealers to furnish information to registrar. All dealers engaged in the sale of motor vehicles in this state shall furnish the registrar or any duly authorized representative with such information as to models, specifications, selling prices, and such other data requested by the registrar as may be necessary in carrying out the provisions of this chapter.

SECTION 4. AMENDMENT. Section 39-22-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-11. Examination of books and records. The registrar of motor vehicles or ~~his~~ any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed motor vehicle dealer relating to any specific complaint made against such dealer and held to be in violation of any of the provisions of this title. In addition, any duly authorized representative of the

department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

SECTION 5. AMENDMENT. Section 39-22-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-12. Officers to administer chapter. The registrar of motor vehicles and ~~his appointee~~ any duly authorized representative shall be responsible for the administration of the provisions of this chapter.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 485

SENATE BILL NO. 2262
(Committee on Natural Resources)
(At the request of the Parks and Recreation Department)

SNOWMOBILE OPERATION

AN ACT to create and enact a new subsection to section 39-24-09 of the North Dakota Century Code, relating to snowmobile operation requirements; and to amend and reenact sections 39-24-03, 39-24-04, and 39-24-09.1 of the North Dakota Century Code, relating to snowmobile registration, exemption from registration, operation, and safety education programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-03. Registration - Application - Issuance - Fees - Renewal. Application for registration shall be made to the department in a form as the department shall prescribe and furnish, and shall state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application shall be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.

Upon receipt of the application and the appropriate fee as hereinafter provided, the snowmobile shall be registered and a registration number and a certificate of registration assigned. The registration number shall be at least two inches [5.08 centimeters] in height and of a reflectorized material, and shall be securely affixed on each side of the forward half of the snowmobile in such position as to provide clear legibility for identification. The certificate of registration shall include information regarding the make, year, serial number, and name and address of the owner.

The fee for registration of each snowmobile shall be two dollars for a registration period of two years beginning January first of each even-numbered year effective January 1, 1980. The fee for initial registration of each snowmobile registered on and after January first of the second year of the two-year registration period

shall also be two dollars. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible shall not exceed two dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there shall be assessed a fee of one dollar per year for each snowmobile registered, which shall be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there shall be assessed a snowmobile trail tax in the amount of six dollars.

Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 shall be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers shall be used only on snowmobiles owned by the dealership.

SECTION 2. AMENDMENT. Section 39-24-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-04. Exemption from registration - Exemption from fees.

1. A registration number shall be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.
2. No registration or fees shall be required of:
 - a. Snowmobiles owned and used by the United States, another state or its political subdivisions.
 - b. Snowmobiles registered in a country other than the United States and temporarily used within this state.
 - c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.
 - e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.

SECTION 3. A new subsection to section 39-24-09 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Helmet required. No person under the age of eighteen may operate, ride, or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.

SECTION 4. AMENDMENT. Section 39-24-09.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-09.1. Operation by persons under age sixteen. Except as otherwise provided in this section, it shall be unlawful for any person twelve years of age and over who has not reached sixteen years of age and who is not in possession of a valid driver's license or permit to operate a snowmobile, except upon the lands of the person's parent or guardian, unless and until the person has completed a snowmobile safety training course as prescribed by the director of the state parks and recreation department pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the commissioner. The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce the provisions of this chapter shall be presumptive evidence that such person is not the holder of such certificate. Fees collected from each person receiving certification must be deposited into the snowmobile trail tax fund for purposes of establishing snowmobile safety programs.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 486

HOUSE BILL NO. 1131
(Committee on Transportation)
(At the request of the Parks and Recreation Department)

ALL-TERRAIN VEHICLES

AN ACT to create and enact a new section to chapter 39-29 and two new subsections to section 39-29-09 of the North Dakota Century Code, relating to an all-terrain vehicle safety fee and to all-terrain vehicle operation requirements; to amend and reenact subsection 1 of section 39-29-01 and section 39-29-10 of the North Dakota Century Code, relating to definition of all-terrain vehicle, safety requirements, and certification fees; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-29-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "All-terrain vehicle" means a motor vehicle using more than two low pressure tires and with a dry weight of less than twelve hundred pounds [544.31 kilograms; any motorized off-highway vehicle fifty inches [1270.00 millimeters] or less in width, having a dry weight of six hundred pounds [272.15 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

SECTION 2. A new section to chapter 39-29 of the North Dakota Century Code is hereby created and enacted to read as follows:

Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee. Upon the sale of an all-terrain vehicle, each dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter the dealer shall file a report with the parks and recreation department that discloses the number of all-terrain vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must

be deposited in the all-terrain vehicle fund established under subsection 2 of section 39-29-05. The fees may be used only by the parks and recreation department and only for all-terrain vehicle safety education and promotion.

SECTION 3. Two new subsections to section 39-29-09 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Helmet required. No person under the age of eighteen may operate, ride, or otherwise be propelled on an all-terrain vehicle unless the person wears a safety helmet meeting United States department of transportation standards.

Passenger restrictions. No operator of an all-terrain vehicle may carry a passenger while operating.

SECTION 4. AMENDMENT. Section 39-29-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-29-10. Operation by persons under age sixteen. Except as otherwise provided in this section, a person under sixteen years of age who is not in possession of a valid operator's license or permit to operate an all-terrain vehicle may not, except upon the lands of the person's parent or guardian, operate an all-terrain vehicle. A person at least twelve years of age may operate an all-terrain vehicle if the person has completed an all-terrain vehicle safety training course prescribed by the director of the state parks and recreation department and has received the appropriate all-terrain vehicle safety certificate issued by the commissioner. The failure of an operator to exhibit an all-terrain vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold such a certificate. Fees collected from each person receiving certification must be deposited in the all-terrain vehicle trail tax fund for all-terrain vehicle safety education and training programs.

SECTION 5. APPLICATION OF ACT. Section 2 of this Act applies to all-terrain vehicles sold after June 30, 1987.

Approved April 14, 1987
Filed April 15, 1987

MUNICIPAL GOVERNMENT

CHAPTER 487

SENATE BILL NO. 2332
(Senator Keller)
(Representative Gunsch)

BUILDING REMOVAL TAX REQUIREMENTS

AN ACT to amend and reenact section 40-01-08 of the North Dakota Century Code, relating to the removal of a building when taxes and special assessments are due.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-01-08. Removal of building when taxes and special assessments or share of bonded indebtedness are due - Lien - Penalty. No person shall remove a building from any lot or tract of land in any municipality, unless it is assessed as personalty or exempt from taxation, until after the taxes and special assessments then due have been paid, nor until the owner shall have paid into the sinking fund for the retirement of any bonded indebtedness of the municipality an amount equal to the just share of the tax which would then be required against the property in said the municipality to pay the principal outstanding, less amount in sinking funds, of the bonded indebtedness of such the municipality. The phrase "taxes and special assessments then due" means all taxes and special assessments that have been levied plus a pro rata estimated tax for the current assessment year. For property classified as residential, "special assessments then due" means the sum of the installments of special assessments certified to the county auditor for extension on the tax list plus the pro rata installment of the special assessment to be certified in the current assessment year. If the building is removed without the payment of the taxes and special assessments and pro rata share of bonded indebtedness, such the taxes, special assessments, and pro rata share of bonded indebtedness shall be a lien on the building notwithstanding its removal as well as upon the lot, lots, tract, or tracts of land from which the same building was removed. This section shall not apply where a building is removed to permit the erection or installation of improvements equal or greater in value than the building removed. Any person violating the provisions of this section is guilty of a class A misdemeanor.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 488

HOUSE BILL NO. 1521
(C. Williams)

MODERN COUNCIL CITY GOVERNMENT

AN ACT to amend and reenact sections 40-03.2-03 and 40-04.1-01 of the North Dakota Century Code, relating to procedures for a city to change to a modern council form of government.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-03.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-03.2-03. Procedure when petition to change from council system of government is filed - Special election - Ballot. When a petition to change from the council system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the council system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballots to be used at the election provided for in this section shall be in substantially ~~one of~~ the following ~~forms~~ form:

Shall the city of ----- change from its organization under the council system of government and become a city under the modern council form of government with a five-man five-member (or seven-member, nine-member, or eleven-member) council?

Yes / /
No / /

Shall the city of ----- change from its organization under the council system of government and become a city under the modern council form of government with a seven-man council?

Yes / /

No / /

Shall the city of ----- change from its organization under the council system of government and become a city under the modern council form of government with an eleven-man council?

Yes / /

No / /

SECTION 2. AMENDMENT. Section 40-04.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04.1-01. City council - Who constitutes - Terms. The governing body of a city operating under the modern council form of government shall be the city council, which shall be composed of five members one of whom shall be the mayor all elected at large or a city council composed of seven, nine, or eleven members, four at least three of whom shall be elected by wards, and at least three of whom, including the one serving as mayor shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large or, a city council composed of eleven members, seven of whom shall be elected by wards and four of whom, including the one serving as mayor, shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large. When a city first adopts a modern council form of government in cities electing five council members, the candidates having the three highest number of votes shall be elected for a four-year term and the other two for a two-year term. In cities electing seven, nine, or eleven council members, the candidates, by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat, or the mayor's seat. A candidate seeking a ward seat shall be a resident of such ward. When a city first adopts a modern council form of government in cities electing seven, nine, or eleven members, the elected mayor candidate and the elected candidates from the four wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. When a city first adopts a modern council form of government in cities electing eleven members, the elected mayor candidate and the elected candidates from the seven wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. Thereafter the terms of members of the council shall be four years, or until their successors are elected and qualified. The city governing body shall allow council members who were previously elected to continue to hold office until their term expires. In that case, council members from the odd-numbered wards and at least two at-large council members must be elected to a four-year term at the first election, with the remainder of the council members being elected to four-year terms at the next regular city election.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 489

SENATE BILL NO. 2444
(Senator Mushik)
(Representative Ulmer)

COMMUNITY DEVELOPMENT BLOCK GRANT TRANSACTIONS

AN ACT to amend and reenact subsection 74 of section 40-05-01 of the North Dakota Century Code, relating to the powers of municipalities in administering community development block grant transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 74 of section 40-05-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

74. Community development block grant program. To loan or give grant money to and secure a mortgage from individuals, associations, or corporations and to purchase ownership shares in corporations or other business associations as provided through the procedures established by the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383, 88 Stat. 633, 42 U.S.C. 5301 et seq.]. This power applies to all community development block grant transactions of the governing body, including any transactions prior to ~~March 22, 1985~~ July 1, 1987. A city is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the city is incurred.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 490

HOUSE BILL NO. 1105
(Committee on Political Subdivisions)
(At the request of the Public Service Commission)

CITY TRAFFIC REGULATION APPROVAL

AN ACT to amend and reenact subsection 14 of section 40-05-02 of the North Dakota Century Code, relating to public service commission approval of municipal traffic regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 14 of section 40-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. Traffic regulation. To regulate, control, or restrict within designated zones, or congested traffic districts, except that the speed limit for vehicles on those streets designated as part of any state highway shall be as determined by mutual agreement with the state highway commissioner, the use of streets, alleys, or other public ways by various classes of traffic, except that any municipal regulations shall be ineffective as to common carriers licensed by this state under a certificate of public convenience and necessity until such regulations are approved by the public service commission.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 40-05-02 was also amended by section 25 of House Bill No. 1050, chapter 73.

CHAPTER 491

HOUSE BILL NO. 1608
(Knudson, Martin)

CITY COUNCIL MEMBERS

AN ACT to amend and reenact sections 40-08-08 and 40-08-09 of the North Dakota Century Code, relating to filling vacancies on city councils and remuneration of city council members who serve as ambulance drivers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-08-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-08. Vacancies on council - How filled. If a vacancy occurs in the office of alderman by death, resignation, or otherwise, the city council may call a special city election to fill such vacancy for the unexpired term, or may, after fifteen days of the date of such vacancy appoint a person from the ward in which the alderman previously holding was elected or appointed to fill such vacancy until the next city election, at which election the unexpired term shall be filled. Upon petition of five percent of the qualified electors of such ward, as determined by the total number of votes cast in such ward in the last general election, the council shall call a special election to fill a vacancy occurring more than six months before the next city election, provided such petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed it ~~shall~~ must be in the possession of the council or its representative before four p.m. on the fifteenth day after the vacancy occurs or after the vacancy was filled by appointment.

SECTION 2. AMENDMENT. Section 40-08-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-08-09. Restrictions on members of council. Ne

1. Except as provided in subsection 2, no member of the city council shall:

- 1- a. Be eligible to any other office the salary of which is payable out of the city treasury;
 - 2- b. Hold any other office under the city government; or
 - 3- c. Hold a position of remuneration in the employment of the city.
2. A member of the city council may serve as an ambulance driver, employed by the city or under a contract with the city, and be remunerated for those services.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 492

SENATE BILL NO. 2088
(Lodoen)

WATER PROJECT CONSTRUCTION AGREEMENTS

AN ACT to amend and reenact section 40-22-06, subsection 3 of section 61-16.1-09, and section 61-16.1-19 of the North Dakota Century Code, relating to agreements authorized to be entered into by cities and water resource districts for the construction of water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-06. Municipality may enter into agreement Agreement with highway department or state agency, county, water resource district, or federal agency for certain improvements. Any municipality in this state, through its governing body, may enter into an agreement with the highway department of the state of North Dakota, or with any state agency, the board of county commissioners, or water resource board of the county in which such the municipality is located, or both, or a joint water resource board which jurisdiction includes the municipality, or any federal agency, or any combination thereof, for the improvement of streets, sewers, and water mains, flood control projects, or of any of such facilities, under the terms of which the contract for such work is to be let by the state highway department or by agency, the board of county commissioners, or by both jointly, water resource board, joint water resource board, the federal agency, or any combination thereof, and for this purpose may create a special improvement district or districts. No such agreement shall be entered into until and unless the governing body certifies that it has obtained authority in accordance with this section to issue improvement warrants to finance the amount that the municipality will be obligated to pay thereunder, over and above the amount of any bonds which have been voted and any other funds which are on hand and properly available for such purpose. If any portion of the cost is to be paid by the levy of special assessments, the governing body shall by resolution declare the necessity of the improvement, setting forth its general nature, the approximate amount or fraction of the cost which the municipality will be

obligated to pay under the agreement, and the fact that this amount, or such lesser amount as the governing body may specify, is proposed to be paid by the levy of special assessments upon property determined to be benefited by the improvement. Any portion of the cost for which the municipality is obligated and which is not assessed upon benefited property or paid from other funds may be agreed to be paid by general taxation of all the taxable property in the municipality, if approval for the incurring of such debt is obtained and provision for the payment thereof is made in accordance with section 40-24-10. The resolution of necessity shall be published once each week for two consecutive weeks in the official newspaper of the municipality and protests may be filed and their sufficiency to bar the improvement shall be determined in accordance with sections 40-22-16 through 40-22-18; except that if under the terms of the resolution of necessity the portion of the cost of the project to be assessed upon benefited property does not exceed twenty-five percent of the total cost to be paid by the highway department or state agency, county, water resource board, joint water resource board, federal agency, and municipality, written protests by the owners of seventy-five percent of the property liable to be assessed for the improvement shall be required to bar further proceedings with reference thereto. In districts created under this section the governing body may dispense with all requirements, other than those herein stated, preliminary to the construction of an improvement by the special assessment method, including the preparation and approval of plans and specifications, advertisement for bids, and execution of contracts and bonds. At any time after the period for filing protests has expired and the protests filed, if any, have been heard and determined to be insufficient, the governing body may issue warrants on the fund of the improvement in the total amount for which the municipality is obligated under the agreement, and may cause to be certified to the special assessment commission that portion of the cost to be borne by the property owners within the district, and the assessment of such amount may be made and such warrants may be issued as in other cases provided for in chapters 40-23 and 40-24.

SECTION 2. AMENDMENT. Subsection 3 of section 61-16.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.

SECTION 3. AMENDMENT. Section 61-16.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-19. Protest. At the hearing, the affected landowners, and any county, township, or city to be assessed, shall also be informed when and where protests against such proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, shall then have thirty days after the date of the hearing to file written protests with the secretary of the water resource board, protesting the project. Any form of written objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing protests against the proposed project has been reached, no more protests may be filed and no person may withdraw his or her name from the list of those filing protests against the proposed project. Any withdrawal of a protest against the proposed project before that time must be in writing. When the protests have been filed and the deadline for filing protests has passed, the board shall immediately determine the sufficiency of the protests. If the board finds that fifty percent or more of the total votes, as determined by section 61-16.1-20, have protested against the proposed project, then the protests shall be a bar against proceeding further with the project. If the protests are found to be insufficient in number or invalid, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside, and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal shall begin to run on the date of publication of the notice. As used in this section, "board" means water resource board.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 493

HOUSE BILL NO. 1297
(Moore)

SPECIAL ASSESSMENT PROJECT BIDS

AN ACT to amend and reenact section 40-22-27 of the North Dakota Century Code, relating to rejection of bids on city projects for improvements by special assessment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-22-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-27. Rejection of bids - Readvertising for bids or construction by municipality without contract - Reevaluation of project. The governing body, if in its opinion the best interests of the municipality ~~will~~ be subserved thereby require, may reject any and all bids filed under the provisions of this chapter. If all bids are rejected, the governing body may:

1. Readvertise for new bids; or
2. Cause the work described in the plans, specifications, and estimates to be done directly by the municipality by the employment of labor and the purchase of materials required, or in any other manner which the governing body shall consider proper, and payment for such work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work shall amount to no more than fifty thousand dollars.
3. Cause the work described in the plans, specifications, and estimates to be reviewed and reevaluated by the engineer for the municipality so that the governing body may determine whether the entire project or only a portion of the project is feasible.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 494

HOUSE BILL NO. 1615
(Representative R. Hausauer)
(Senator Thane)

BUSINESS DEVELOPMENT SPECIAL ASSESSMENTS

AN ACT to create and enact chapter 40-22.1 of the North Dakota Century Code, relating to city levy of special assessment taxes for improvements by special assessment for promotion of business activity and new business development.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Chapter 40-22.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

40-22.1-01. **Power of municipalities to defray expense of improvements by special assessments for business promotion.** A municipality may defray the expense of improvements by special assessments for the promotion of business activity and new business development through any means not inconsistent with the purposes of this chapter including, but not limited to, advertising, public information, marketing, decoration of public places, promotion of public events, furnishing of music in any public place, providing professional management, planning and promotion, and the general promotion of trade activities. For purposes of this chapter, "municipality" means a city with a population of ten thousand or less. The governing body of the municipality may make and execute necessary or convenient agreements to exercise the powers and functions under this chapter including contracts with any entity. In planning an improvement project, under this chapter, the governing body may include any work and materials which are deemed necessary or reasonably incidental to the project.

40-22.1-02. **Improvement districts to be created.** For an improvement project under section 40-22.1-01 and defraying the costs of the project by special assessments, a municipality may create and alter a business improvement district by ordinance or resolution. The governing body of the municipality shall designate the district by an appropriate name and by a number distinguishing it from other improvement districts. A municipality may make and finance any improvement and levy special assessments for the improvement under any alternate procedure in this title. If the proposal for creation

of an improvement project under this chapter is made by any person, group, or entity that is not an officer, board, or agency of the municipality, the person, group, or entity shall file a bond or other sufficient security, payable to the municipality, to defray all costs incurred if the improvement project is later barred under section 40-22.1-08. The bond or other sufficient security must be filed with the city auditor prior to the initiation of any further proceedings under this chapter. The governing body of the municipality shall determine the amount and form of the bond or other sufficient security.

40-22.1-03. Size and form of improvement district - Regulations governing. Any business improvement district created by a municipality may embrace two or more separate property areas. A business improvement district must include all properties which in the judgment of the governing body, after consultation with the city auditor or city auditor's designee planning the improvement, will be benefited by the creation of all or a portion of the business improvement project. A district may be created without uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of a municipality to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement. Upon receipt of a petition signed by the owners of three-fourths of the area to be added to a business improvement district in which an improvement is proposed or created the governing body may enlarge the district. Any district created under this chapter shall include only property devoted, in whole or in part, to commercial or business use.

40-22.1-04. Auditor's report required - Contents. After a business improvement district has been created, the governing body of a municipality, to make any of the improvements set out in section 40-22.1-01 in the manner provided in this chapter, shall direct the city auditor for the municipality or some other person, group, or entity to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the work.

40-22.1-05. Approval of plans, specifications, and estimates. At any time after receiving the report required by section 40-22.1-04, the governing body may direct the city auditor or other person, group, or other entity preparing the report to prepare detailed plans and specifications concerning the improvement. The plans and specifications must be approved by a resolution of the governing body of the municipality. The plans, specifications, and estimates are the property of the municipality and must be filed in the office of the city auditor and shall remain on file in that office subject to inspection by the public.

40-22.1-06. Resolution declaring improvements necessary - Contents of resolution - Publication of resolution. After the report required by section 40-22.1-04 has been filed and approved, the governing body of the municipality shall declare by resolution that it is necessary to make the improvements. A resolution is not required if the governing body determines by resolution that a written petition for the improvement, signed by the owners of a majority of the area of the property included within a district, has been received. The resolution must refer intelligibly to the report and must include a map of the municipality showing the proposed business improvement district. The resolution must be published once each week for two consecutive weeks in the official newspaper of the municipality.

40-22.1-07. Protest against resolution of necessity - Meeting to hear protest. If, within thirty days after the first publication of the resolution declaring the necessity of a business improvement project, the owners of any property within the improvement district file written protest with the city auditor against the adoption of the resolution and describing the property which is the subject of the protest, the governing body of the municipality, at its next meeting after the expiration of the time for filing protests, shall hear and determine the sufficiency of the protests.

40-22.1-08. Protest bar to proceeding - Invalid or insufficient protest - Payment of costs - Tax levy. If the governing body finds the protest to contain the names of the owners of one-third or more of the area of the property included within the business improvement district, the protest bars proceeding further with the improvement project described in the plans and specifications. If the governing body finds the protest to contain the names of the owners of one-third or more of any separate property area included within the district, the protest bars proceeding with the applicable portion of the improvement project, but does not bar proceeding with the remainder of the improvement project or assessing the cost of the improvement project against other areas within the district, unless the protest represents one-third or more of the area of the entire district. Termination of proceedings does not relieve the municipality of responsibility for payment of costs incurred. The municipality is not responsible for payment of costs incurred if the improvement project is proposed by any person, group, or entity that is not an officer, board, or agency of the municipality. Payment of the costs incurred for such a barred improvement project must be as provided in section 40-22.1-02. For payment of costs incurred for a barred improvement project proposed by a municipality, the municipality may, if available funds are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the costs of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the governing body may cause the improvement to be made, levy and collect necessary assessments, and contract for the improvement and acquisition of necessary property or services.

40-22.1-09. Execution and filing of contracts. All contracts under this chapter must be entered into in the name of the municipality and must be executed for the municipality by the executive officer and countersigned by the auditor. After the contract is signed by the other party, it must be filed in the office of the city auditor.

40-22.1-10. Contracts - Conditions and terms. A contract executed under this chapter must require the work to be done pursuant to the plans and specifications on file in the office of the city auditor, subject to the approval of the city auditor acting for the municipality, and must provide:

1. The governing body may suspend the work at any time for improper performance and relet the contract or order reperformance of all or any of the work improperly done.
2. The time within which the work is to be completed.
3. The period of time for which the work must be guaranteed or warranted.
4. The fund from which the contract price is to be paid by the municipality.
5. That the consideration expressed in the contract is payable only in warrants drawn on the fund described in the contract.
6. That the municipality assumes and incurs no general liability under the contract.
7. That the failure of the city auditor to reject work and materials which are not up to specifications and acceptance of the job by the city auditor does not release the party from liability for any failure to perform work or furnish materials in accordance with the plans and specifications.

The city auditor acting for the municipality shall supervise and inspect the work during its progress. In addition to any rights which a municipality may have under its contract for establishment and operation of part or all of a business improvement after a contract has been awarded and before contract work has been completed a municipality may, with the consent of the other party and without advertising for bids, order additional work done by that party of the same character as that which was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to said party for such additional work may not exceed twenty percent of the amount estimated by the city auditor for the municipality to be payable for that character of work under the original contract.

40-22.1-11. Abbreviations, letters or figures may be used in proceedings for levy and collection of special assessments. In all proceedings for the levy and collection of special assessments abbreviations, letters and figures may be used to denote full or partial additions, lots, blocks, sections, townships, and ranges or years, days of the month, and amounts of money.

40-22.1-12. City auditor to keep complete record of improvements - Record as evidence. The city auditor shall keep a complete record of all the proceedings in the matter of making any improvements under this chapter. The records must include all reports and confirmations, all petitions, orders, appointments of commissioners, notices and proofs of publication, and resolutions of the governing body. The records, a certified transcript of the records, or the original papers, proofs, publications, orders, or resolutions on file in the auditor's office may be admitted in evidence in any court or place in this state without further proof as evidence of the facts they contain.

40-22.1-13. Defects and irregularities in improvement proceedings are not fatal. If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

40-22.1-14. City auditor's statement of estimated cost required - Governing body to enter into contracts. Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract to that person, firm, corporation or other entity best able to perform the work, upon the basis of cash payment for the work.

Approved April 7, 1987

Filed April 9, 1987

CHAPTER 495

HOUSE BILL NO. 1536
(Representatives O'Shea, Hill)
(Senator Freborg)

MUNICIPAL POWER AGENCIES

AN ACT to amend and reenact section 40-33.2-01 and subsection 2 of section 40-33.2-02 of the North Dakota Century Code, relating to municipal power agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-33.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-33.2-01. Findings and purpose. The purpose of this chapter is to provide a means for these North Dakota cities which now operate a utility pursuant to under law for the local distribution of electric energy to secure, by individual or joint action among themselves or by contract with other public or private entities within or outside the state, an adequate, economical, and reliable supply of energy. To accomplish this purpose it is necessary for such cities to have the authority, by agreement between two or more of their number, to create a separate municipal corporation with the power and authority to finance and acquire facilities for the generation or transmission of electric energy, or ~~interest~~ interests in such those facilities or rights to part or all of the capacity thereof. It is determined that an adequate, economical, and reliable supply of electric energy is essential to the orderly growth and prosperity of these communities, and a shortage of such electrical energy is inimical to the safety, health, welfare, and prosperity of residents of the state and to the sound growth and development of its communities. Such a shortage exists and is expected to continue and increase because of the difficulty in the operation of municipal generating plants, of achieving economies of size, limiting environmental impacts, and providing for peak loads. Accordingly, it is determined that the exercise of the authority granted herein will benefit the people of the state and serve a valid public purpose in improving and otherwise promoting their health, welfare, and prosperity.

SECTION 2. AMENDMENT. Subsection 2 of section 40-33.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "City" means a city organized under the laws of this state and authorized to engage in the local distribution and sale of electric energy pursuant to section 40-33-02. Any city so engaged on January 1, 1977, is authorized to continue such distribution and sale, and every city so authorized may exercise, either individually or as a member of a municipal power agency, all of the powers granted in this chapter.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 496

HOUSE BILL NO. 1308
(R. Hausauer)

ELECTRIC FACILITIES IN VACATED AREAS

AN ACT to amend and reenact section 40-39-04 of the North Dakota Century Code, relating to electric facilities existing on vacated streets and alleys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-39-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located - Conditions. No public grounds, streets, alleys, or parts thereof over, under, or through which ~~shall~~ have been constructed, lengthwise, any sewers, water mains, gas, or other pipes, or telephone ~~or telegraph~~, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way therefor, ~~shall~~ may be vacated unless such the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless such the grantee ~~shall consent~~ consents thereto, or unless perpetual easements for the maintenance of such the sewers, water mains, gas, or other pipes, or telephone ~~or telegraph~~, electric, or cable television lines have been given. Any vacation of areas within which are located electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated areas.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 497

HOUSE BILL NO. 1116
(Committee on Political Subdivisions)
(At the request of the State Auditor)

CITY BUDGETING AND BORROWING

AN ACT to amend and reenact sections 40-40-05 and 40-40-18 of the North Dakota Century Code, relating to budget requirements of municipalities and borrowing from various funds to meet emergencies; and to repeal section 40-40-17 of the North Dakota Century Code, relating to municipal transfers of appropriated line items.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-40-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-05. Contents of preliminary budget statement. A preliminary budget shall be prepared as required by generally accepted accounting principles. The preliminary budget shall set forth specifically:

1. An estimated revenue schedule for the general fund of the municipality, including the following information:
 - a. The actual revenues received from all sources during the preceding fiscal year.
 - b. The estimated revenues from all sources for the current fiscal year.
 - c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.
2. An appropriations schedule for the general fund of the municipality, including the following information:
 - a. The actual expenditures for all purposes for the preceding fiscal year.

- b. The estimated expenditures for all purposes for the current fiscal year.
- c. The estimated expenditures for all purposes for the ensuing fiscal year. Expenditures shall be segregated and itemized as follows:
- (1) Current expenditures. This shall include all maintenance and operation expenses, including all wages, salaries, and other items which comprise the current expenditures of the municipality. Although the whole amount paid for wages and salaries may be stated in one sum in the budget statement, there shall be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries or wages and the annual amount paid to each person. Municipalities may include an item of expense for equipment replacement, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on current costs, on all equipment owned by the city, and no expenditure may be paid out of said equipment replacement fund except for the purchase of equipment to replace equipment which is worn out, damaged, or obsolete. The term "equipment" does not include structures or building fixtures. The expense for equipment replacement shall be placed in a separate fund. Current expenditures are categorized as general government, public safety, public works, health and welfare, culture and recreation, and other budgeted items of a current nature.
 - (2) Capital expenditures. This shall include all capital and betterment expenditures, including new construction, major repairs, and all other items which go toward adding to the permanent improvement and value of the municipal property an item which shall be placed in a separate fund as a building reserve. The building reserve fund item may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on the original costs of all buildings and structures owned by the city, and no expenditures may be paid out of the said fund except for purchase, construction, or reconstruction to replace buildings or structures which are obsolete, substandard, or generally unfit for public use.

- (3) Debt service expenditures. This shall cover all debt retirement requirements, including all amounts required to retire floating indebtedness, bonded indebtedness, and to pay interest thereon during the current fiscal year.
3. A separate schedule for each special revenue fund of the municipality, including the following information:
 - a. The actual revenues received from all sources during the preceding fiscal year.
 - b. The estimated revenues from all sources for the current fiscal year.
 - c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.
 - d. The actual expenditures for all purposes for the preceding fiscal year.
 - e. The estimated expenditures for all purposes for the current fiscal year.
 - f. The estimated expenditures for all purposes for the ensuing fiscal year.
 4. A separate schedule for each enterprise fund of the municipality, including the following information:
 - a. The estimated revenues for the current fiscal year.
 - b. The estimated revenues for the ensuing fiscal year.
 - c. The estimated expenditures for the current fiscal year.
 - d. The estimated expenditures for the ensuing fiscal year.
 5. The estimated cash balance standing to the debit or credit of the municipality at the end of the current fiscal year for the general fund, each special revenue fund, and each enterprise fund.
 - 6- A statement of all uncollected taxes due to the municipality-
 - 7- A statement of all uncollected special assessments due to the municipality-

- 8- A statement showing the amounts and terms of bond issues, certificates of indebtedness, and warrants or other debts to be taken care of by the levies for debt retirement.

SECTION 2. AMENDMENT. Section 40-40-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-18. Amounts taken from various funds and borrowings to meet emergency - Vote required - Contents of resolution. Upon the happening of any emergency caused by the destruction or impairment of any municipal property necessary for the conduct of the affairs of the municipality, or by epidemic or threatened epidemic, or by the entry by a court of competent jurisdiction of a judgment for damages against the municipality, the governing body may meet any such emergency in the manner provided in this section. If there is a sufficient unexpended balance in any fund or funds ~~embraced within groups A or B~~ except funds established for debt retirement to provide for the emergency, the governing body, by a resolution adopted by the vote of two-thirds of the members present at any meeting, or, if the governing body consists of less than three members, by a unanimous vote of all the members thereof, may take the amount necessary to meet the emergency from any such fund or funds. If the municipality has not reached its debt limit, the governing body, by the vote required to take moneys from a designated fund, may order its executive officer and financial committee to borrow an amount sufficient to meet the emergency. Any amount so borrowed shall be for a time not to extend beyond the close of the fiscal year, and such amount and the interest thereon shall be a part of the next budget. The resolution authorizing any emergency expenditure shall recite the facts showing the existence of an emergency of the kind specified in this section.

SECTION 3. REPEAL. Section 40-40-17 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 498

SENATE BILL NO. 2300 (Holmberg)

ELECTION OF PARK COMMISSIONERS

AN ACT to amend and reenact sections 40-49-05, 40-49-07, and 40-49-08 of the North Dakota Century Code, relating to coincidence of terms and election of office of park district commissioners and providing for sharing of costs of elections by cities and park districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-05. Board of park commissioners in city - Terms.

- 1. The powers of a park district in a city shall be exercised by a board of park commissioners consisting of five members. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a successor is elected and qualified. The term of office of a commissioner begins two weeks after the regular biennial city election at which the commissioner is elected.
- 2. Members of ~~the first~~ a newly created board shall hold office as follows:
 - a. Three members until ~~the third Tuesday in April in the year in which~~ two weeks after the next regular biennial city election is held.
 - b. Two members until two years from the ~~date~~ time mentioned in subdivision a.

Thereafter, each commissioner shall hold office for four years from and after the third Tuesday in April following the date of his election and qualification and until his successor is elected and qualified.

3. Members of existing boards of park commissioners which existed before July 1, 1987, shall be elected and hold office as follows-
- a- If two members are to be elected at the next regular biennial city election, two members two years from the next regular biennial city election, and one member four years from the next regular biennial city election, then terms of office shall be as follows:
 - (1) Current members shall serve until their current terms expire.
 - (2) All members elected hereafter, other than those elected to fill an unexpired term according to section 40-49-09, shall hold office for four years.
 - b- If one member is to be elected at the next regular biennial city election, two members two years from the next regular biennial city election, and two members four years from the next regular biennial city election, the terms of office shall be as follows:
 - (1) Current members shall serve until their current terms expire.
 - (2) All members elected hereafter, other than those elected to fill an unexpired term according to section 40-49-09, shall hold office for four years.
 - e- If two members are to be elected at the next regular biennial city election, one member two years from the next regular biennial city election, two members four years from the next regular biennial city election, then terms of office shall be as follows:
 - (1) Current members shall serve until their current terms expire.
 - (2) At the next regular biennial city election, two members shall be elected, with the candidate receiving the highest number of votes to serve a four-year term, and the candidate receiving the second highest number of votes to serve a two-year term.
 - (3) All members elected after the next regular biennial city election, other than those elected to fill an unexpired term according to section 40-49-09, shall hold office for four years on the staggered basis in effect on June 30, 1986.

SECTION 2. AMENDMENT. Section 40-49-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-07. Election and qualification of members of board of park commissioners. The members of the board of park commissioners shall possess the qualifications of electors of the municipality city and shall be elected by the qualified electors of the park district. The members of the first board may be elected at any regular municipal city election or at a special election called for that purpose by the governing body of the municipality city. Thereafter, members of the board shall be elected at the regular municipal city elections. Such members shall qualify within ~~ten days~~ two weeks after their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

SECTION 3. AMENDMENT. Section 40-49-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-08. Organization of board of park commissioners - Municipal City auditor to act as treasurer of board or board to appoint clerk. On the third Tuesday in April Two weeks after their election, the members of the board of park commissioners shall organize the board by selecting a president and a vice president. The city auditor of the municipality shall be ex officio treasurer of the park district or the board may appoint a clerk and such other employees as shall be deemed needed for the efficient conduct of the district's business and shall fix their compensation. The clerk shall take the oath prescribed for civil officers and shall obtain such bond as may be required by the board.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 499

HOUSE BILL NO. 1333
(Representative Moore)
(Senator Satrom)

PARK DISTRICT CONTRACT BIDS

AN ACT to amend and reenact section 40-49-14 of the North Dakota Century Code, relating to bids on contracts let by a board of park commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-14. When ye and nay vote taken - Letting contracts - Debt limit - Bills, claims, and demands against board. Ye and nay votes shall be taken on all propositions involving the expenditure of money, levying of taxes, or the issuance of bonds or certificates of indebtedness. Approval of an expenditure of money shall be recorded in the record of the board's proceedings and this shall be sufficient to indicate approval without requiring the members to sign or initial the voucher or order for payment. All contracts exceeding ten thousand dollars shall be let to the lowest responsible bidder after advertisement in the official newspaper of the municipality once each week for ~~three~~ two successive weeks. The board may reject any or all bids. All contracts shall be in writing and shall be signed by the president ~~and clerk~~ of the board or a designated representative and unless so executed, they shall be void. The debt of a park district shall not exceed one percent of the taxable property within the district according to the last preceding assessment. No bill, claim, account, or demand against the district shall be audited, allowed, or paid until a full, written, itemized statement has been filed with the governing body or unless otherwise authorized by the governing body pursuant to contract or other action. The governing body, in its discretion, may require the filing of any additional information which it may deem necessary to the proper understanding and audit of any claim or account and it may require the filing of a sworn statement in such form as it may prescribe or as noted below:

CERTIFICATE

I do hereby certify that the within bill, claim, account, or demand is just and true; that the money therein charged was actually paid for the purposes therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such bill, claim, account, or demand, has been paid; and that the goods therein charged were actually delivered and were of the value charged.

Sign here -----

If signed for a firm or company,
show authority on this line.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 500

HOUSE BILL NO. 1671
(Representatives Strinden, Hoffner)
(Senators Lips, Satrom)
(Approved by the Committee on Delayed Bills)

PARK DISTRICT USER FEES

AN ACT to provide for collection of user fees by park districts and issuance of evidences of indebtedness in anticipation of user fee revenues.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Park district authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of park commissioners may prescribe and collect user fees for facilities or activities furnished by the park district and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.
2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.
3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.
4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest at such rate or rates, as may be determined in the resolution.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 501

HOUSE BILL NO. 1342
(Representative Shaft)
(Senator Holmberg)

PLATTING TOWNSITES

AN ACT to provide for the platting of townsites; to amend and reenact sections 24-07-03 and 40-51.2-04 of the North Dakota Century Code, relating to references to platting laws; to repeal chapter 40-50 of the North Dakota Century Code, relating to the platting of townsites and the correction and vacation of plats; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Laying out townsites, additions, and subdivisions - Survey and plat required - Contents of plat. Any person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land shall cause the land to be surveyed and a plat made of the land. The written plat must comply with the following:

1. The plat must describe particularly and set forth all the streets, alleys, and public grounds, and all outlots or fractional lots within or adjoining the townsite or jurisdiction, together with the names, widths, courses, boundaries, and extent of all such streets, alleys, and public grounds, and giving the dimensions of all lots, streets, alleys, and public grounds.
2. All lots and blocks, however designated, must be numbered in progressive numbers and their precise length, width, and area be stated on the map or plat. The streets, alleys, or roads which divide or border the lots must be shown on the map or plat.
3. The plat must indicate that all outside boundary monuments have been set, and indicate those interior monuments that have been set. There must be shown on the plat all survey and mathematical information, including bearings and distances, and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines appearing on the plat. All interior lot lines and exterior boundary lines of the plat must be correctly

designated on the plat and show bearings on all straight lines, or angles at all angle points, and central angle, radius, and arc length for all curves. All distances must be shown between all monuments as measured to the hundredth of a foot [0.3048 centimeters]. All lot distances must be shown on the plat to the nearest hundredth of a foot [0.3048 centimeters] and all curved lines within the plat must show central angles, radii, and arc distances. A north arrow and the scale of the plat must be shown on the plat. The scale must be of a dimension that the plat may be easily interpreted. If a curved line constitutes the line of more than one lot in any block of a plat, the central angle for that part of each lot on the curved line must be shown.

4. Ditto marks may not be used on the plat for any purposes.
5. If a river, stream, creek, or lake constitutes a boundary line within or of the plat, a survey line must be shown with bearings or angles and distances between all angle points and their relation to a waterline, and all distances measured on the survey line between lot lines must be shown, and the survey line shown as a dashed line.
6. The unadjusted outside boundary survey and the plat survey data must close by latitude and departure with an error that does not exceed one part in ten thousand parts.
7. All rivers, streams, creeks, lakes, and all public highways, streets, and alleys of record must be correctly located and plainly shown and designated on the plat.
8. The names and adjacent boundary lines of any adjoining platted lands must be dotted on the plat.
9. The scale must be shown graphically and the basis of bearings must be shown. The plat must be dated as to the completion of the survey and preparation of the plat.
10. The purpose of any easement shown on the plat must be clearly stated. Building setbacks may not be shown on the plat.
11. Any plat which includes lands abutting upon any lake or stream must show, for the purpose of information only, a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a river or stream as designated by the state water commission or federal emergency management agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat

lying within the floodplain. All elevations must be referenced to a durable bench mark described on the plat together with its location and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 2. Monuments required for survey - Destruction. Durable ferromagnetic monuments must be set at all angle and curve points on the outside boundary lines of the plat. The monuments must be at least eighteen inches [45.72 centimeters] in length and at least one-half inch [1.27 centimeters] in sectional dimension. Any monument of the survey must bear the registration number of the land surveyor making the survey. Any person who disturbs, removes, or destroys any survey or reference monument or landmark evidencing a property line or cornerpost is guilty of a class B misdemeanor.

SECTION 3. Instruments of dedication - Certifying and recording plat. The plat must contain a written instrument of dedication, which is signed and acknowledged by the owner of the land. When there is divided ownership, there must be indicated under each signature the lot or parts of lots in which each party claims an interest. All signatures on the plat must be written with black ink, not ball point. The instrument of dedication must contain a full and accurate description of the land platted. The registered land surveyor shall certify on the plat that the plat is a correct representation of the survey, that all distances are correct and monuments are placed in the ground as shown, and that the outside boundary lines are correctly designated on the plat. The dedication and certificate must be sworn to before an officer authorized to administer an oath. The plat must be presented for approval to the governing body affected by the plat, if right-of-way dedication is required, together with an attorney's opinion of title stating the name of the owner of record.

SECTION 4. Recording plat. Upon final approval of a plat under section 11-33.2-11 or 40-48-21, the subdivider shall record the plat in the office of the register of deeds of the county where the plat is located. Whenever plat approval is required by a jurisdiction, the register of deeds may not accept any plat for recording unless the plat officially notes the final approval of the governing body of the jurisdiction and acknowledgement of the planning and zoning commission.

SECTION 5. Conveyance of land by noting or marking map or plat - Status as general warranty - Land for public use. When the plat has been made out and certified, acknowledged, and recorded as required by sections 1, 3, and 4, every donation or grant to the public, or to any individual, religious society, or corporation, marked or noted as such on the plat or map is a sufficient conveyance to vest the fee simple title in the parcel of land as designated on the plat. The mark or note made on a plat or map is for all intents and purposes a general warranty against the donors, their heirs and representatives, to the donees or grantees for the expressed and intended uses and purposes named in the plat and for

no other use or purpose. The land intended to be used for the streets, alleys, ways, or other public uses in any jurisdiction or addition thereto must be held in the corporate name of the jurisdiction in trust for the uses and purposes set forth and expressed and intended.

SECTION 6. Correction of plats - Declaration of necessity by resolution - Publication. If any part of any platted addition, outlot, or parcel of ground, in any jurisdiction, is found to be inadequately or erroneously described in the plat, or if the plat is in error or is deficient as to marked or scaled distances, angles, or descriptions, or has other defects which make it incorrect or deficient, the governing body of the jurisdiction, by resolution, may declare it necessary to correct the plat or plats or to replat the property. In that case, the resolution must be published in the official newspaper of the jurisdiction at least ten days before the meeting of the governing body to consider objections to the procedure.

SECTION 7. Resolution declaring necessity for correcting plat - Contents. The resolution mentioned in section 6 must set forth:

1. The description of the property affected.
2. The nature of the errors or defects.
3. An outline of the proposed corrections.
4. An estimate of the probable cost of having the corrections made.
5. Notice that any interested owner may file objections to the proposed work or to its cost and that the objections will be heard and considered at a meeting designated for that purpose.
6. The time the governing body of the jurisdiction will meet to consider all the objections.

SECTION 8. Governing body to order work done after hearing objections. After all the objections filed before the meeting have been heard and considered, the governing body of the jurisdiction, if it deems the work advisable and if the owners of the majority of the property affected have not filed a protest, shall order a land surveyor registered in this state to do the work in accordance with the resolution. If no interested owner has demanded the resurvey, the jurisdiction shall pay for the resurvey.

SECTION 9. Requirements governing land surveyor in correcting plat or in replatting - Affidavit and certification. The land surveyor designated to make the correction or to do the replatting shall follow the original hubs, stakes, monuments, and lines, and, by actual survey and measurements on the ground, shall make the plat conform to the divisions, subdivisions, blocks, lots, outlots,

pieces, and parcels of land as originally laid out. All lost or disputed points, lines, and angles must be determined by actual survey and made to conform with the original survey and must be marked on the ground in a manner customary and as is provided in sections 1 through 17. All numbers, letterings, and names of references to blocks, lots, outlots, additions, streets, avenues, and alleys, must be the same as on the original plat, and the revised and corrected plat must be a true plat of the survey as made originally. The registered land surveyor shall make an affidavit and certificate that the plat has been made to the best of the land surveyor's ability. The registered land surveyor shall affix that affidavit and certificate to the plat.

SECTION 10. Filing completed plat - Publication of notice of completed plat. The completed plat must be filed with the chief administrative officer of the jurisdiction, who shall publish a notice of the filing. The notice must stipulate that all interested parties may view the plat. The notice must set the date the governing body of the jurisdiction will meet to hear and consider objections to the survey as made and must be published at least ten days before the hearing.

SECTION 11. Resurveys to determine merits of objections. After hearing objections to the corrected plat, the governing body may order surveys and resurveys to determine the merit of any claim or objection. The governing body may adjourn the hearing until the necessary information is available.

SECTION 12. Acceptance or rejection of corrected plat - Recording - Effect of corrected plat. After completing the hearing, the governing body shall affirm or reject the corrected plat by resolution. If the plat is affirmed by a majority vote of the governing body, the plat must be recorded in the office of the register of deeds within sixty days and a blueprint of the plat must be filed in the office of the chief administrative officer. The plat so recorded and filed is the true and correct plat of the property described and supersedes all previous plats.

SECTION 13. Assessment of costs of new plat - Publication of assessments - Approval of assessments. The chief administrative officer shall assess the cost of making the plat against the properties benefited proportionally to the benefits received. The assessments are subject to the approval of the governing body of the jurisdiction after due consideration and hearing of all objections at a meeting designated for that purpose. At least ten days before the hearing, the assessments must be published in full by the chief administrative officer of the jurisdiction in the official newspaper of the jurisdiction. The chief administrative officer shall certify the assessments, when approved by the governing body.

SECTION 14. Notice of errors on recorded plat - Certificate by original surveyor. Notwithstanding section 6, if a plat, or what purports to be a plat, has been signed and filed in the office of the register of deeds of the county where the land is situated, and

the plat fails to identify or correctly describe the land to be so platted or subdivided, or to show correctly on its face the tract of land intended or purported to be platted or subdivided, or is defective because the plat or subdivision and the description of land purported to be so platted or subdivided is inconsistent or incorrect, the registered land surveyor who prepared the plat may sign a certificate stating the nature of the error, omission, or defect and stating the information that surveyor believes corrects the error, supplies the omission, or cures the defect, referring, by correct book and page, to the plat or subdivision and designating its name, if it has a name. The registered land surveyor shall date and sign the certificate.

SECTION 15. Filing and recording of surveyor's certificate.
The register of deeds of the county in which the land platted or subdivided is located shall accept each certificate for filing and recording upon payment of a fee commensurate with the length of the certificate. Neither witnesses nor an acknowledgment is required on any such certificate, but it must be signed by the registered land surveyor and must include a statement that the signing surveyor holds valid registration in this state. The register of deeds shall make suitable notations on the record of the plat or subdivision to which the certificate refers to direct the attention of anyone examining the plat or subdivision to the record of that certificate. No such certificate has the effect of destroying or changing vested rights acquired based on an existing plat or subdivision despite errors, defects, or omissions.

SECTION 16. Vacation of plat - Before and after sale of lots - Effect.

1. Before the sale of lots, a plat, any part of a plat, a subdivision of land, or a townsite may be vacated by the proprietors by a written instrument declaring the plat to be vacated. The instrument must be signed, acknowledged or approved, and recorded in the office in which is recorded the instrument to be vacated. The signing and recording of that instrument destroys the force and effect of the recording of the plat which is so vacated and divests all public rights in the streets, alleys, easements, and public grounds laid out as described in the plat.
2. If lots have been sold, a plat or any part of a plat may be vacated by all owners of the lots in the plat joining in the signing of the instrument declaring the vacation. Vacation of streets and public rights is not effective without endorsement by the governing body that has the power to approve the plat. The endorsement must indicate the public rights to be vacated.

SECTION 17. Action by register of deeds. The register of deeds shall write in plain, legible letters, in black ink that is not ballpoint ink, across that part of a plat which has been vacated

the word "vacated" and shall make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

SECTION 18. AMENDMENT. Section 24-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-03. Section lines considered public roads - Closing same under certain conditions. In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 1 through 17 of this Act or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines shall be considered are public roads, to be opened open to the width of two rods thirty-three feet [10.06 meters] on each side of such section lines; where the same have not been opened already upon the order of the board having jurisdiction, without any survey being had, except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessments of damages.

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, are is authorized, after public hearing and a finding by the commissioners of public benefit, to close section line roads or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing such section line road to be a dead end, providing the closing of such dead end section line road does not deprive adjacent landowner access to his property. After such section line roads are closed, they may be leveled and farmed by the adjacent landowners or tenants, only if the leveling or farming does not disturb, remove, or destroy any survey or property reference monument. However, if drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming such lands.

SECTION 19. AMENDMENT. Section 40-51.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-51.2-04. Exclusion by petition of owners and electors. Upon a petition signed by not less than three-fourths of the qualified electors and by the owners of not less than three-fourths in assessed value of the property in any territory within the limits of an incorporated municipality and contiguous or adjacent to such limits, the governing body of the municipality, by ordinance, may in its discretion, disconnect and exclude such territory from the municipality. The provisions of this This section, however, shall apply applies only to lands which that have not been platted under the provisions of either chapter 40-50 sections 1 through 17 of this Act or section 57-02-39, and where no municipal improvements have been made or constructed therein or adjacent thereto. Further, in the event any property for which exclusion is petitioned has been within the limits of an incorporated municipality for more than ten years prior thereto and, as of the time of filing the petition, is not platted and has no municipal improvements thereon, the governing body of the municipality shall may disconnect and exclude such territory by ordinance from the municipality.

SECTION 20. REPEAL. Chapter 40-50 of the North Dakota Century Code is hereby repealed.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 502

HOUSE BILL NO. 1071
(Mertens)

ANNEXATION NOTICE

AN ACT to amend and reenact sections 40-51.2-05, 40-51.2-07, and 40-51.2-11 of the North Dakota Century Code, relating to a requirement that all landowners in territory to be annexed or excluded by a city be notified by mail of the proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-51.2-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-51.2-05. Notice - Petition of owners and electors. The governing body shall not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of their petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has caused notice of the time and place of consideration of the petition to be mailed to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. Said notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04.

SECTION 2. AMENDMENT. Section 40-51.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-51.2-07. Annexation by resolution of municipal corporation. The governing body of any municipality may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the municipality shall adopt a resolution describing the property to be annexed.
2. The governing body of the municipality shall cause said resolution together with a notice of the time and place it will meet to hear and determine the sufficiency of any written protests against such proposed annexation to be

published in the official newspaper once each week for two consecutive weeks. The governing body of the municipality shall cause notice to be mailed to the owner of each parcel of real property within the area to be annexed at the person's last known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of such resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property shall be annexed without the written consent of the state agency or department having control thereof. The governing body of the municipality, at its next meeting after the expiration of the time for filing such protests, shall hear and determine the sufficiency thereof.

3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution shall be included within and shall become a part of the city, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds, whereupon annexation shall become effective. Annexation shall be effective for the purpose of general taxation on and after the first day of February next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use.

If the owners of one-fourth or more of the territory proposed to be annexed protest, the city may seek annexation by petition to the annexation review commission as hereinafter provided.

SECTION 3. AMENDMENT. Section 40-51.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-51.2-11. Notice required. At the time he sets the time and place of hearing, the chairman of such commission shall direct the annexing municipality to cause a notice of such hearing and a copy of its petition to be published at least once a week for two successive weeks in the official newspaper of such municipal corporation, to mail a notice of the hearing and a copy of its petition to the owner of each parcel of real property in the area to be annexed at the person's last known mailing address, and to serve a copy of such notice and petition upon the chairman of the governing body of the county and township, if organized, wherein the territory to be annexed lies. Such hearing shall be held not less than thirty days after the first publication of such notice. Proof of publication and service of the notice and petition as required herein shall be filed with the chairman of such commission prior to the time of such hearing.

CHAPTER 503

HOUSE BILL NO. 1637
(Representative Strinden)
(Senator Olson)

NEW INDUSTRY TAX EXEMPTIONS

AN ACT to amend and reenact sections 40-57.1-02 and 40-57.1-04.1 of the North Dakota Century Code, relating to tax exemptions for new industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-02. "Project" and "municipality" defined. As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" includes counties as well as municipalities of the types listed in subsection 4 of section 40-01-01, and the term "project" means any real property, buildings and improvements on real property or the buildings thereon, and any equipment permanently located on such real property or in such buildings, which are used or useful in connection with revenue-producing enterprises, or any combination of two or more such enterprises, engaged or to be engaged in-

- 1- Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof, including the retail sale of any such product by the enterprise that assembled, fabricated, manufactured, mixed, or processed it and the incidental sale of any service of a kind essential to the primary activities of the enterprise-
- 2- Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacturing, provided that "selling" does not include the sale of any service except storing, warehousing, and distributing or as provided in subsection 1 nor does it include the sale at retail of any product except as provided in subsection 1.

SECTION 2. AMENDMENT. Section 40-57.1-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-04.1. Ad valorem and income tax exemption for existing structures - Requirements. Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from income taxation and ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure, which date shall be determined by the tax commissioner. No structure shall qualify for this exemption unless it has been vacant for at least the ~~three consecutive years~~ twelve months prior to the commencement of project operations.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 504

SENATE BILL NO. 2476
 (Senators Satrom, Nething, Waldera)
 (Representatives A. Hausauer, Goetz, Halmrast)

CITY LODGING AND RESTAURANT TAX

AN ACT to create and enact a new section to chapter 40-57.3 of the North Dakota Century Code, relating to a city lodging and restaurant tax; and to amend and reenact sections 40-57.3-01, 40-57.3-02, 40-57.3-03, and 40-57.3-04 of the North Dakota Century Code, relating to a city lodging and restaurant tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.3-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-01. City lodging tax - Imposition - Amount - Disposition. The governing body of any city may, by ~~resolution~~ ordinance, impose a city tax, not to exceed two percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month. The tax imposed by this ~~chapter~~ section shall be in addition to the state sales tax on rental accommodations provided in chapter 57-39.2 and any city which imposes the tax upon gross receipts described in this section shall deposit all proceeds in the city visitors' promotion fund. Moneys deposited in the city visitors' promotion fund shall be spent only as provided in this chapter. This chapter ~~shall not apply~~ applies to ~~home rule all cities~~ ~~and does not~~ limit the authority of a home rule city to levy any taxes authorized by other provisions of law.

SECTION 2. A new section to chapter 40-57.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

City lodging and restaurant tax - Imposition - Amount - Disposition - Referral. In addition to the tax under section 40-57.3-01, the governing body of any city may, by ordinance, impose a city tax, at a rate not to exceed one percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or

tourist court accommodations within the city for periods of less than thirty consecutive calendar days or one month and upon the gross receipts of a restaurant from any sales of prepared food or beverages, not including alcoholic beverages for consumption off the premises where purchased, which are subject to state sales taxes. For purposes of this section, "restaurant" means any place where food is prepared and intended for individual portion service for consumption on or off the premises and "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all, each, or in any combination be subjected to the tax under this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided in this section. The tax imposed under this section is in addition to state sales taxes on rental accommodations and restaurant sales and any city which imposes the tax under this section shall deposit all proceeds in the city visitors' promotion capital construction fund. Moneys deposited in the city visitors' promotion capital construction fund shall be spent only as provided in this chapter. An ordinance adopted under this section may not become effective sooner than sixty days after it is adopted by the governing body of the city. The provisions of chapter 40-12 with regard to referral of ordinances apply to an ordinance adopted under this section except that a petition to refer an ordinance adopted under this section must be presented to the governing body of the municipality before four p.m. on the sixtieth day after the ordinance described in the petition was adopted by the governing body of the municipality. Revenues from a tax imposed under this section may not be pledged under section 40-57.3-03 to payment of bonds or evidences of indebtedness until after the time has passed for filing a referral petition against an ordinance under this section or, if a referral petition is filed, until after the referral petition has been submitted to the vote of the electors of the municipality.

SECTION 3. AMENDMENT. Section 40-57.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-02. City visitors' promotion fund - City visitors' promotion capital construction fund - Visitors' committee - Establishment - Purpose. The governing body of any city which imposes a city tax pursuant to section 40-57.3-01 or section 2 of this Act shall, as appropriate, establish a city visitors' promotion fund, a city visitors' promotion capital construction fund, and a visitors' committee ~~which~~. The visitors' committee shall serve as an advisory committee to the city governing body in administering the proceeds from the ~~tax~~ taxes available to the city under this chapter. The moneys in the visitors' promotion fund shall be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city. The moneys in the visitors' promotion capital construction fund shall be used generally for the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion. The committee shall consist of five members appointed by the governing body of the

city. These appointees shall serve without compensation, except for reimbursement for necessary expenses. Committee members shall serve for a term of four years, except that two of those initially appointed shall be appointed for an initial term of two years. Vacancies shall be filled in the same manner as the initial appointment. The committee shall elect a chairperson and vice chairperson from among its members to serve for a term of two years.

SECTION 4. AMENDMENT. Section 40-57.3-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-03. Budget - Contracts - Bonds - Capital construction ~~prohibited.~~ The governing body of the city shall annually set the budget, if any, under which the committee shall operate. The governing body of the city may contract with any person, firm, association, or corporation to carry out the purposes of the city visitors' promotion fund or the city visitors' promotion capital construction fund created by under section 40-57.3-02. The governing body of the city may irrevocably dedicate any portion of revenues from the tax authorized under section 2 of this Act and may authorize and issue bonds or other evidences of indebtedness in the manner prescribed by section 40-35-08 to be paid by those revenues for any purpose that moneys in the city visitors' promotion capital construction fund may be used; and such tax upon being pledged to payment of bonds or evidences of indebtedness issued pursuant to this section shall not be reduced or repealed by the governing body or by the electors of the municipality by any initiated amendment to or referendum of the ordinance referred to in section 2 of this Act, so long as any of such bonds or evidences of indebtedness remain outstanding. The proceeds from ~~this tax~~ the tax imposed under section 40-57.3-01 shall not be used for any type of capital construction or purchase of real property. The proceeds from the tax imposed under section 2 of this Act may be used only for payment of bonds issued, and the costs of issuance related thereto, under this section or capital construction, maintenance, and repair or acquisition of property consistent with the purposes of this chapter.

SECTION 5. AMENDMENT. Section 40-57.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules. ~~The tax taxes imposed by under this chapter is are~~ due and payable monthly and shall be collected monthly and administered by the state tax commissioner in accordance with the relevant provisions of chapter 57-39.2. The amount the tax commissioner ~~shall remit~~ remits monthly to each city as taxes collected for that city's visitors' promotion fund and visitors' promotion capital construction fund shall be reduced by three percent as an administrative fee necessary to defray the cost of collecting the ~~tax~~ taxes and the expenses incident to ~~such~~ collection. The administrative fee shall be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 shall specifically apply to the filing of returns and administration of the ~~tax~~ taxes imposed ~~by~~ under this chapter.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 505

HOUSE BILL NO. 1594
(Moore)

SKYWAYS

AN ACT to amend and reenact sections 40-62-01, 40-62-02, 40-62-03, 40-62-04, 40-62-05, 40-62-06, and 40-62-07 of the North Dakota Century Code, relating to pedestrian malls and skyways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-62-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-01. Authority for pedestrian mall and skyway improvements. The governing body of any city may by resolutions create a special improvement district, order and approve plans and specifications, determine the necessity, advertise and enter into contracts, issue special improvement warrants and bonds, and levy special assessments for the improvement of one or more streets within its central business district to be regulated and maintained as a mall for primarily pedestrian use, or for the construction of skyways within its central business district, in the manner and upon the terms and conditions set forth in chapters 40-22 to 40-27, except as otherwise provided in this chapter. For the purposes of this chapter, "skyway" means an overhead walkway, whether open or enclosed, allowing pedestrian traffic between buildings separated by a street and all corridors, passageways, methods of ingress and egress, and other appurtenances necessary for an integrated and connected system.

SECTION 2. AMENDMENT. Section 40-62-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-02. Determination of necessity. The resolution determining the necessity of the improvement shall designate the portions of streets to be included within the mall or crossed by skyways and shall state the reason or reasons why such designation is deemed necessary. It is recognized by state policy that such necessity may exist in a city of substantial size for one or more of the following reasons:

1. Increases in population and in automobile usage and parking may create conditions of traffic congestion in the central business district during part or all of normal business hours which may be alleviated by a pedestrian mall or skyways.
2. Continued unlimited use of the designated street or streets may constitute a hazard to the safety of pedestrians and may impede necessary movement of police and fire equipment, ambulances, and other emergency vehicles.
3. Certain streets may be improved to their maximum width for sidewalk and roadway purposes, and may be incapable of further widening without taking buildings and improvements or substantially impeding the movements of pedestrians using the facilities of the central business district.
4. Orderly plans for urban renewal, rehabilitation, and redevelopment may require or may be facilitated by such an improvement.
5. Pedestrian use may be the highest and best use of such the designated streets, and the limitation of the use thereof by vehicles may be in the best interest of the city and of the optimum benefit to the properties in the improvement district, if:
 - a. Reasonably convenient alternate routes exist for vehicles going through the central business district to other parts of the city and the state;
 - b. The designated streets are not federal, state, or county highways, or, if they are, the making of the improvement is conditioned upon the relocation of such highways in the manner provided by law; and
 - c. Properties abutting on the designated streets can reasonably and adequately receive and deliver merchandise and materials either from other streets or alleys, or by providing for limited use of the designated streets for this purpose.
6. Construction of skyways may alleviate the conflict between pedestrian and motor vehicle traffic.

SECTION 3. AMENDMENT. Section 40-62-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-03. Plans and specifications. The plans and specifications shall provide for improvement of the designated streets or construction of skyways in a manner designed for use primarily for the free movement, safety, convenience, and enjoyment of pedestrians, whether or not part of the mall is made available for

emergency or other permitted vehicles. A mall improvement may provide for and include space for seating, cafe tables, shelters, trees, flower plantings, sculptures, newsstands, telephone booths, traffic signs, kiosks, fire hydrants, street lighting, ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead and underground radiant heating devices, walls, barriers, and all such other fixtures, equipment, facilities, and appurtenances as will in the governing body's judgment enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city. Sidewalks may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets, or such other materials or combinations of materials as the governing body may approve. The governing body may in its discretion narrow any roadway to be kept and maintained in the mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within or at the ends of blocks, and may cause any roadway to curve and meander within the limits of the street, if deemed desirable to enhance the usefulness or appearance of the mall, regardless of any nonuniformity of street width or any curve or absence of curve in the centerline of the street. A skyway may be open or enclosed, heated or unheated, and may include any fixtures, equipment, facilities, and appurtenances the governing body determines will enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city.

SECTION 4. AMENDMENT. Section 40-62-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-04. Jurisdiction to improve and regulate. Upon hearing of any protests made by the owners of property within the improvement district in the time and in the manner provided by law, if the governing body shall determine the protests to be insufficient, it may proceed with the improvement as in the case of other special improvements; provided, that before so proceeding a certified transcript of the resolution of necessity shall be recorded in the office of the register of deeds, and any person aggrieved thereby may appeal therefrom to the district court of the county within twenty days after such recording, but only on the ground that the establishment of the mall or construction of the skyway in accordance with the resolution will unreasonably and arbitrarily obstruct the public use of and interest in the designated street or streets, or that such resolution has been adopted in a manner contrary to law. Notwithstanding the establishment of a mall or skyway, or the improvement of any street or any portion thereof as a part of such mall or skyway, or any limitation of the use thereof by vehicles, the city and the governing body shall retain at all times their police powers and other powers and rights pertaining thereto, and no such action shall constitute a vacation, in whole or in part, of any portion of a city street.

SECTION 5. AMENDMENT. Section 40-62-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-05. Regulations Use of mall or skyways. The jurisdiction of the city to make a pedestrian mall improvement or to construct skyways, when established in the manner provided by law, shall include jurisdiction to establish by ordinance and from time to time amend reasonable regulations for the use of the mall or skyways, conforming to the following provisions:

1. Vehicles shall be permitted to cross the mall at all street intersections except those of two streets each forming part of the mall.
2. The owners and occupants of all properties abutting upon the mall which have access to no other street or alley for delivery or receipt of merchandise and materials shall be permitted to use the mall during such days and hours, which need not be ordinary business days or hours, and in such manner and over such distance, as the governing body shall find to be reasonably adequate for this purpose and to be possible without interfering with use by pedestrians and by emergency and other vehicles for which use is permitted.
3. The regulations may permit use for any purpose or activity which will enhance the freedom of movement, safety, convenience, or enjoyment of pedestrians, including but not limited to, seating, sidewalk cafes, displays of merchandise, exhibits, advertising, telephones, transit, transit stops and shelters, newsstands, plantings, ornaments, protection from the elements, emergency vehicles, and police and fire equipment.
4. The governing body may adopt a use plan prepared by city officers or consultants, providing for the location and distribution within the mall of furniture, sculpture, pedestrian traffic control devices, trees, flowers, lighting or heating facilities, and any other equipment or properties placed or installed in the mall, whether owned by the city or others, and may license and regulate the operation and maintenance thereof.
5. Any furniture, structure, facility, or use located or permitted pursuant to such a plan shall not, by reason of such location or use, be deemed a nuisance or unlawful obstruction or condition, and neither the city nor any user acting under permit shall be liable for any injury to person or property therefor unless directly caused by its own negligence or that of its employees in the construction, maintenance, or operation of such furniture, structure, facility, or use.
6. The regulations for skyways may establish reasonable hours for use, permit closure during hours of nonuse, prohibit use of the skyway for nonpublic purposes, and provide

methods necessary to prevent vandalism and other unauthorized use of the skyway.

SECTION 6. AMENDMENT. Section 40-62-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-06. Maintenance and improvement. A pedestrian mall or skyway established pursuant to this chapter may be maintained and the cost of such maintenance may be paid by all means permitted by law for other streets. The governing body may also annually cause an estimate to be made of the probable cost of ~~such~~ the maintenance during the current fiscal year, in excess of the cost of maintenance of streets of similar length, width, and location not used as a mall, and may assess ~~such~~ the excess cost of maintenance on properties within the improvement district; provided, that ~~such~~ the assessments ~~shall~~ may not exceed the special benefits determined to be received by ~~said~~ the properties from ~~such~~ the maintenance. The assessment list approved by the governing body ~~shall~~ must be filed in the office of the city auditor, who ~~shall~~ must mail to the street address of each lot and parcel proposed to be assessed, and to ~~such~~ any other address as may be requested in writing by the owner or occupant of any ~~such~~ a lot or parcel, a notice stating the amount proposed to be assessed upon ~~such~~ the lot or parcel, and that any objection thereto may be made in writing filed with the city auditor on or before a specified date, not less than twenty days after ~~such~~ the mailing, on which date, at a time and place specified in the notice, the governing body will consider all objections. At this meeting, or any adjournment thereof, the governing body shall review all assessments and hear all persons desiring to be heard, and may amend the assessments in such manner as it ~~shall~~ determine determines to be just and reasonable, and may confirm the same and direct the assessment list to be filed with the county auditor, and the assessments made therein to be extended upon the tax lists of the city for the current year and collected with interest and penalties as general taxes are collected and paid over to the city auditor and placed by ~~him~~ the auditor in a special fund to be used only for the purpose of current, reasonable and necessary expenses of the operation and maintenance of the mall or skyway.

SECTION 7. AMENDMENT. Section 40-62-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-07. Additional improvements and extensions. An established pedestrian mall or skyway may be subsequently improved or extended by proceedings taken in the same manner as for its establishment, and ~~such~~ the improvements or extensions may thereafter be regulated and maintained as provided above.

Approved March 20, 1987
Filed March 23, 1987

UNIFORM COMMERCIAL CODE

CHAPTER 506

SENATE BILL NO. 2487
(Langley)

CROP MORTGAGE FILING

AN ACT to amend and reenact section 41-09-40 of the North Dakota Century Code, relating to place of filing of crop mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-40. (9-401) Place of filing - Erroneous filing - Removal of collateral.

1. The proper place to file in order to perfect a security interest is as follows:
 - a. When the collateral is equipment used in farming operations, or farm products, or growing crops, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept, and in addition when the collateral is crops, as provided in subdivision b.
 - b. When the collateral is ~~crops growing or to be grown~~, timber to be cut, or is minerals or the like (including oil and gas), or accounts subject to subsection 5 of section 41-09-03, or when the financing statement is filed as a fixture filing (section 41-09-34) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded.
 - c. In all other cases, in the office of the secretary of state.

2. A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.
3. Filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.
4. If collateral is brought into this state from another jurisdiction, the rules stated in section 41-09-03 determine whether filing is necessary in this state.
5. Notwithstanding subsections 1, 2, 3, and 4, and subject to subsection 3 of section 41-09-23, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is in the office of the secretary of state. This filing constitutes a fixture filing (section 41-09-34) as to the collateral described therein which is or is to become fixtures.
6. For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office, if it has more than one place of business.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 507

SENATE BILL NO. 2272
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

UCC FORMS AND FILING FEES

AN ACT to amend and reenact subsections 1 and 3 of section 41-09-41 and subsection 5 of section 41-09-42 of the North Dakota Century Code, relating to Uniform Commercial Code form requirements and fees for those filings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 41-09-41 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral. In addition, to be sufficient a financing statement filed after July 1, 1987, must include either the social security number or federal tax identification number of the debtor. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or when the financing statement is filed as a fixture filing (section 41-09-34), and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection 5. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the

security agreement so provides or if the original has been filed in this state.

- 3. A form substantially as follows is sufficient to comply with subsection 1:

Name of debtor (or assignor) -----

Address -----

Debtor's social security number or federal tax identification number-----

Name of secured party (or assignee) -----

Address -----

- a. This financing statement covers the following types (or items) of property:

(Describe) -----

- b. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe real estate) -----

- c. (If applicable) The above goods are to become fixtures on:

(Describe real estate) -----

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record.) The name of a record owner is -----.

- d. (If products of collateral are claimed)

Products of the collateral are also covered.

(use) -----
 whichever) Signature of Debtor (or Assignor)
 is) -----
 applicable)) Signature of Secured Party (or Assignor)

SECTION 2. AMENDMENT. Subsection 5 of section 41-09-42 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 5. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be as follows:

- a. For filing and indexing any statement under the uniform commercial code, ~~three~~ five dollars, and when a nonstandard statement is presented for filing, an additional fee of ~~two dollars~~ one dollar per page shall be made.

- b. For making certified copies of any recorded instrument, ~~three~~ five dollars.

- c. For completing a certificate requesting information, ~~three~~ five dollars for the first five entries and one dollar for each additional five entries or fraction thereof.
- d. For completing a certificate requesting copies, ~~three~~ five dollars for the first three copies or fraction thereof, and one dollar for each additional copy.
- e. For furnishing copies only of any filed instrument, one dollar.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 508

SENATE BILL NO. 2205
(Committee on Agriculture)
(At the request of the Secretary of State)

CENTRAL NOTICE SYSTEM FEES

AN ACT to amend and reenact subsections 8, 9 and 11 of section 41-09-42 of the North Dakota Century Code, relating to fees of the central notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 8, 9 and 11 of section 41-09-42 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. The fee for filing a form with the secretary of state pursuant to subsection 9 of section 41-09-28 is not to exceed five dollars. This fee may not directly be charged to the person to whom the loan is made.
9. The fee for furnishing information on a verbal request pursuant to subsection 5 of section 41-09-46 is ~~two~~ five dollars.
11. The fee for furnishing lists pursuant to subsection 4 of section 41-09-46 shall be established by the secretary of state, but not to exceed ~~eight~~ twenty-five dollars for a microfiche list and ~~twenty-five dollars~~ actual cost for a printed list.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 509

HOUSE BILL NO. 1370
(Representatives Stofferahn, O'Connell, Almie)
(Senator Hiiken)

MOTOR VEHICLE AS COLLATERAL

AN ACT to create and enact a new subsection to section 41-09-50 of the North Dakota Century Code, relating to disposition of motor vehicles under secured transactions and liability of debtor for any deficiency; and to amend and reenact subsection 2 of section 41-09-50 of the North Dakota Century Code, relating to disposition of collateral by secured parties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 41-09-50 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus; and. If the collateral is a motor vehicle that is consumer goods, the debtor is not liable for any deficiency unless the secured party has provided the notice required under section 2 of this Act. In all other cases, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

SECTION 2. A new subsection to section 41-09-50 of the North Dakota Century Code is hereby created and enacted to read as follows:

If the collateral is a motor vehicle that is consumer goods, the secured party shall, in the security agreement, provide the following notice to the debtor: "NOTICE: THE MOTOR VEHICLE IN THIS TRANSACTION MAY BE SUBJECT TO REPOSSESSION. IF IT IS REPOSSESSED AND SOLD TO SOMEONE ELSE, AND ALL AMOUNTS DUE TO THE SECURED PARTY ARE NOT RECEIVED IN THAT SALE, YOU MAY HAVE TO PAY THE DIFFERENCE." The notice must be set forth in a conspicuous manner.

OCCUPATIONS AND PROFESSIONS

CHAPTER 510

SENATE BILL NO. 2282
(Senators Waldera, Lips)
(Representatives Dalrymple, Wald)

ABSTRACTERS

AN ACT to amend and reenact sections 43-01-10 and 43-01-11 of the North Dakota Century Code, relating to abstracters' examination fees and liability policies; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-10. Certificate of registration - Application - Examination - Fee. Any person, firm, or corporation desiring to obtain a certificate of authority under ~~the provisions of~~ subsection 2 of section 43-01-09 shall make application therefor to the board and shall pay to the secretary-treasurer thereof an examination fee ~~fixed by the board~~ not exceeding ~~five hundred dollars~~ the actual cost of the applicant's examination by the board. The application shall be upon a form prepared by the board and shall contain such information as may be desired by it. The board shall fix the date and place for the examination of the applicant and shall give him notice thereof by mail. The applicant shall ~~present himself~~ appear at the time and place specified in the notice, and the board shall examine ~~him~~ the applicant under such rules ~~and regulations~~ as it may prescribe. If the application is made by a firm or corporation, one of the members or officers thereof shall take the examination.

1. Registered abstracters, within the meaning of the chapter, shall comprise all persons who shall, upon the passage of this chapter, be in charge, either individually or jointly with other persons, of the abstract office which is the holder of a valid and subsisting certificate of authority as provided by this chapter and who shall obtain a certificate of registration as hereinafter provided, or persons who shall be granted certificates of registration by the board after passage of this chapter.

2. Any person desiring to obtain a certificate of registration under this chapter shall make application to the board and shall pay to the secretary-treasurer of the board an examination fee fixed by the board not exceeding one hundred dollars except as hereinafter provided. Such application shall be upon a form to be prepared by the board and to contain such information as may be desired by it. Thereupon the board shall fix a date and place for the examination of such applicant, of which notice shall be given to applicant by mail, who shall ~~present himself~~ appear at such meeting. Whereupon the board shall proceed to examine such applicant or applicants under such rules ~~and regulations~~ as may be adopted by the board.
3. Any person, who, upon the effective date of this chapter, is in charge, either individually or jointly with other persons, of an abstract office which is the holder of a valid and subsisting certificate of authority provided by subsection 2 of section 43-01-09 and who shall make application to the board prior to the expiration of said certificate of authority shall upon the payment of a fee fixed by the board not exceeding one hundred dollars be issued a certificate of registration, without examination, under such rules as may be provided by said board.
4. The certificate of registration issued by said board under the provisions hereof shall recite, among other things, that the holder thereof has complied with ~~the provisions~~ of this chapter relating to examination or otherwise, and shall entitle the holder of such certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority, under the provisions of this chapter. Certificates of registration shall be issued upon the payment of a fee fixed by the board not exceeding one hundred dollars and shall be valid for one year from the date thereof but shall be renewed annually by said board upon application within thirty days prior to the expiration thereof upon a payment of a fee fixed by the board not exceeding one hundred dollars to the secretary-treasurer of the board. The board may issue temporary certificates of registration in its discretion.
5. Said board shall keep a register, wherein it shall enter the names of all applications for registration, and for certificates of authority, with their place of business and such other information as may be deemed appropriate, including the action taken by said board thereon, and the dates upon which certificates of registration and certificates of authority are issued.

SECTION 2. AMENDMENT. Section 43-01-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-11. Bonds or liability policy - Deductible policy permitted. Before a certificate of authority shall be issued, the applicant therefor shall file with the secretary-treasurer of the board a surety bond in favor of the state, or an abstractor's liability policy to be approved by the board as to form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state, in a penal sum or limit of liability equal to ten thousand dollars for each ten thousand inhabitants, or major fraction thereof, residing in the county in which the applicant's office is maintained, as shown by the last official federal or state census preceding the filing of the bond or abstractor's liability policy. Such bond, or abstractor's liability policy, however, shall not be less than one hundred thousand dollars. The bond or liability policy shall be conditioned for the payment by the abstractor of any liability imposed upon him by law for damages arising from any claim against him that may be sustained by or that shall accrue to any person by reason or on account of any negligent act, error or omission in any abstract or certificate of title, or continuation thereof, made and issued by the abstractor. All surety bonds, liability policies, and evidence of annual renewal of the bonds and policies must be filed with the secretary-treasurer of the board. All abstractors' liability policies shall be endorsed to provide that cancellation cannot be effected by either the abstractor or the insurance company without ten days' written notice to the abstractors' board of examiners. It shall be permissible under this section to file an abstractor's liability policy in the deductible form, provided that the deductible provision shall not exceed ~~one~~ ten thousand dollars.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 511

SENATE BILL NO. 2094
(Senator Peterson)
(Representative Moore)

BARBER LICENSE FROM OTHER STATE

AN ACT to create and enact a new section to chapter 43-04 and a new subsection to section 43-04-42 of the North Dakota Century Code, relating to qualifications of barbers registered in another state to receive a certificate of registration to practice barbering in this state and the fee for such a certificate; and to repeal section 43-04-38 of the North Dakota Century Code, relating to the issuance of a permit to practice as a journeyman barber to persons having practiced barbering in another state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Persons having practiced barbering in another state - Qualifications for certificate of registration as registered barber. The board may waive the requirement of a satisfactory examination and issue to an applicant a certificate of registration to practice barbering, if the applicant:

1. Is at least eighteen and one-half years of age.
2. Has completed high school or received a high school equivalency degree.
3. Has been graduated from a school of barbering approved by the board which requires as a requisite to graduation the completion of not less than one thousand five hundred fifty hours of instruction. If the applicant has not completed the requisite number of hours of instruction, each year of the applicant's subsequent barbering experience constitutes the equivalent of two hundred hours of instruction which may be applied toward fulfilling the requisite number of hours.

4. Has a valid license or certificate of registration as a practicing barber from another state that has substantially the same requirements for licensing or registering barbers as required by this chapter.
5. Delivers to the board a certificate from the examining board of another state certifying that the applicant is a licensed or registered barber in good standing and has practiced full time as a barber in that state for a period of at least three years.
6. Has paid the required fee.

SECTION 2. A new subsection to section 43-04-42 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For issuance of a certificate to an applicant who qualifies under section 1 of this Act, one hundred twenty-five dollars.

SECTION 3. REPEAL. Section 43-04-38 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 512

SENATE BILL NO. 2378
(Senators Nalewaja, Yockim)
(Representative Tollefson)

CONTRACTOR LICENSE INFORMATION

AN ACT to create and enact two new sections to chapter 43-07 of the North Dakota Century Code, relating to display of contractor's license number on certain building permits and a public awareness program of contractors' responsibilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duty to supply license number when applying for building permit - Display of number. When applying for a building permit, a contractor shall supply the permit issuing official that contractor's license number. That official shall enter those numbers on the permit. A person performing general contractor's work on that person's own property, even if exempt from the licensing requirements of this chapter, shall, when applying for a building permit, supply the building permit issuing official the license number, as soon as available, of each subcontractor engaged on the project and doing work covered by the permit. That official shall enter each number so supplied before inspection of the work.

SECTION 2. A new section to chapter 43-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Public awareness program. On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 1 of this Act.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 513

SENATE BILL NO. 2109
(Committee on Industry, Business and Labor)
(At the request of the Electrical Board)

ELECTRICIANS' LICENSES

AN ACT to amend and reenact sections 43-09-13, 43-09-13.1, 43-09-14, and 43-09-15 of the North Dakota Century Code, relating to the licensing of electricians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-13. License fees. The following shall be the examination ~~Examination~~ and annual license fees required to be paid for an electrician's license-

- 1- Master electrician- examination fee, twenty-five dollars, annual license fee, forty dollars-
- 2- Journeyman electrician- examination fee, ten dollars, annual license fee, fifteen dollars-
- 3- Class B electrician- examination fee, ten dollars, annual license fee, twenty dollars must be set by the board.

SECTION 2. AMENDMENT. Section 43-09-13.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-13.1. Apprentice electrician registration. An apprentice electrician shall register with the state electrical board after six months of employment and shall pay an annual registration fee of five dollars in an amount set by the board. ~~He shall~~ An apprentice electrician may not be allowed to work on installations without the personal supervision of a licensed electrician.

SECTION 3. AMENDMENT. Section 43-09-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-14. Master electrician and class B electrician - Undertaking - Fund. Before entering into a contract agreement or undertaking with another for the installation of electrical wiring or installation of electrical parts of other apparatus, a master electrician or a class B electrician shall execute and deposit with the board an undertaking in the sum of three thousand dollars for a master electrician or two thousand dollars for a class B electrician conditioned for the faithful performance of all electrical work undertaken by him and the strict compliance with all the provisions of this chapter and the requirements of the board. In addition, a deposit must be made with the board in the amount of twenty-five dollars by a master electrician and in the amount of fifteen dollars by a class B electrician, in lieu of a surety bond. The deposit so made must be accumulated by the board in a special fund to be used for the completion of installations abandoned by electricians referred to in this section, not to exceed the amount of three thousand dollars for a master electrician and two thousand dollars for a class B electrician. The board shall waive the deposit for a renewal of license by electricians who have made an initial deposit under this section if at the beginning of the renewal year the fund exceeds thirty thousand dollars. Funds in excess of thirty thousand dollars at the end of each year may be committed and used at the direction of the board to inform and educate electricians concerning the requirements of the electrical code. The board may prescribe forms for the undertaking and make ~~such~~ rules as it ~~may deem~~ deems necessary to carry out the intent of this section.

SECTION 4. AMENDMENT. Section 43-09-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-09-15. Renewal of license - Denial, suspension, or revocation of licenses. An electrician's license shall be issued for a term of only one year, but may be renewed without examination upon the payment of the proper fee. If the licensee fails to renew his the license for a period of five three consecutive years or more, he may be the licensee is required to appear for reexamination. The state electrical board may deny, suspend, revoke, or refuse to renew any license issued or applied for under the provisions of this chapter for any of the following reasons:

1. Failure or refusal to maintain or adhere to the minimum standards set forth in the electrical code referred to in section 43-09-21.
2. Any cause for which the issuance of the license could have been refused had it then existed and been known to the board.
3. Commitment of any act of gross negligence, incompetency, or misconduct in the practice of a master or journeyman electrician or the business of an electrical contractor.

4. Material misstatement, misrepresentation, or fraud in obtaining the license.
5. After due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with the provisions of this chapter.
6. Failure or refusal to make deposit or acquire public liability insurance as required by sections 43-09-14 and 43-09-20.

Any person whose license is denied or whose license is suspended or revoked by the board, or who is refused a license by the board, may appeal to the appropriate court.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 514

HOUSE BILL NO. 1406
(Rydell)

COSMETOLOGY TRAINING

AN ACT to amend and reenact subsection 3 of section 43-11-19 and subdivision a of subsection 1 of section 43-11-27 of the North Dakota Century Code, relating to educational qualifications of cosmetology students and cosmetology training.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-11-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Have educational qualifications equivalent to completion of ~~two~~ four years of high school; and

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 43-11-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in a school of cosmetology. In no event shall more than ~~one~~ two thousand ~~one hundred~~ sixty hours instructor's training be required for admission to examination. Under this subdivision the practical portion of the examination may be waived if the written examination is supplemented with video tapes of the applicant's teaching procedures; or

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 515

HOUSE BILL NO. 1174
(Committee on Social Services and Veterans Affairs)
(At the request of the Board of Nursing)

NURSING STUDENT LOANS

AN ACT to provide for transfer of funds from the nursing scholarship loan fund to the board of nursing; to amend and reenact sections 43-12-26.1 and 43-12-27 of the North Dakota Century Code, relating to definitions and duties of the board of nursing in granting scholarship loans to nursing students; and to repeal sections 43-12-28, 43-12-29, 43-12-30, 43-12-31, 43-12-32, and 43-12-35 relating to qualifications of candidates, use of scholarship loans, scholarship loan payments, note requirements, collections, note cancellations, and the creation of a permanent nurses' scholarship loan fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. TRANSFER OF NURSES' SCHOLARSHIP LOAN FUNDS. All funds remaining in the fund known as the nurses' scholarship loan fund must be disbursed to the board of nursing by the state treasurer.

SECTION 2. AMENDMENT. Section 43-12-26.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12-26.1. Definitions. In sections ~~section~~ 43-12-27 through ~~43-12-31~~, unless the context or subject matter otherwise requires:

1. "Practical nurse student" means one who has met all the requirements for enrollment in an approved course for practical nursing "Board" means the North Dakota board of nursing.
2. "Professional graduate nurse" means a person who has met all legal requirements for licensure in this state and has been registered by the state board, who practices or holds a position by virtue of the person's professional knowledge and legal status, and who holds a license from the state board for the current year "Graduate nurse

student" means a registered nurse who is enrolled in a nursing program for advanced study.

3- ~~"State board" means the North Dakota board of nursing.~~

4- ~~"Student of nursing" means one who has met all the requirements for enrollment in an approved school of nursing.~~

SECTION 3. AMENDMENT. Section 43-12-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12-27. Duties of the state board.

1. The state board may grant ~~scholarship~~ scholarships or loans to students attending a ~~school of program in nursing~~ in accordance with the laws and rules pertaining to ~~registration of the licensing of registered nurses~~ or licensing of practical nurses and to ~~professional graduate nurses graduate nurse students meeting board~~ requirements for advanced study.
2. The state board shall make rules and ~~regulations and establish standards, requirements and procedure in administering sections 43-12-26.1 through 43-12-31 for granting scholarships or loans~~ so as to encourage young men and women to enter the nursing profession.

SECTION 4. REPEAL. Sections 43-12-28, 43-12-29, 43-12-30, 43-12-32, and 43-12-35 of the North Dakota Century Code and section 43-12-31 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 516

HOUSE BILL NO. 1208
(Committee on Human Services and Veterans Affairs)
(At the request of the Board of Nursing)

NURSING LICENSES

AN ACT to create and enact a new subsection to section 43-12.1-02 of the North Dakota Century Code, relating to definition of the word "licensee"; to amend and reenact sections 43-12.1-11, 43-12.1-12, and 43-12.1-14 of the North Dakota Century Code, relating to when a nursing license is issued, the qualifications for obtaining a nursing license by endorsement and the imposition of fines, costs, and disbursements for respondents in disciplinary proceedings before the board of nursing; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-12.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Licensee" means one who has met all the legal requirements for licensure and has been issued a license or a temporary permit to practice as a registered nurse or a licensed practical nurse.

SECTION 2. AMENDMENT. Section 43-12.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-11. License - When issued. Upon satisfactory completion of the licensing examination for registered nurses or licensed practical nurses, the board shall issue a ~~certificate of registration~~ license to practice. A current license to practice will be issued upon proof that the applicant is a resident of North Dakota or upon verification of employment in North Dakota or a federal agency.

SECTION 3. AMENDMENT. Section 43-12.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-12. License by endorsement. The board may issue a license to practice as a registered nurse or licensed practical nurse to an applicant from another state by endorsement if the applicant:

1. Has satisfactorily completed a the appropriate nursing education program in another country or a the appropriate nursing education program approved by a board of nursing in the United States. For purposes of this subsection, "appropriate nursing education program" means one that meets or exceeds standards for registered or practical nursing programs in North Dakota at the time the applicant qualified for initial licensure outside of North Dakota.
2. Has been duly licensed in another state or country on the basis of passing a licensing examination acceptable to the board.
3. Is a resident of North Dakota or has accepted employment in North Dakota.

Upon receipt of the completed application for license by endorsement, payment of fee as set by the board and evidence that an applicant will meet all the requirements for licensure in North Dakota, the board may issue a temporary permit to practice as a registered nurse or licensed practical nurse in this state until the license is issued. Such temporary permit shall expire at the end of ninety days and may be renewed only for reasons satisfactory to the board.

SECTION 4. AMENDMENT. Section 43-12.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-14. Grounds for discipline - Penalties. The board shall have the power to discipline licensees as necessary by reprimanding the licensee, placing the licensee on probationary status, denying, suspending, or revoking a license or permit to practice nursing issued in accordance with this chapter, if the person is found:

1. To be guilty of fraud or deceit in procuring or attempting to procure a license or permit to practice nursing.
2. To have had a license to practice nursing suspended or revoked in another jurisdiction which has not been reinstated.
3. To have been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a nurse, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. To be guilty of unprofessional conduct likely to deceive, defraud, or harm the public.

5. To be practicing nursing incompetently by reason of negligent acts.
6. To be mentally or physically unsafe for nursing practice.
7. To be guilty of willfully and repeatedly violating the provisions of this chapter.

Any person may file a written sworn complaint with the executive director of the board, charging a licensee with having been guilty of committed any of the actions specified as grounds for discipline. The board shall fix a time and place for a hearing. A copy of the complaint, specifying the charges against the licensee with reasonable clarity, together with a notice of the time and place fixed for the hearing shall be served on the accused personally or by registered mail at least twenty days before the hearing. The notice shall inform the party proceeded against that unless an answer to the complaint is received by the board at least three days before the hearing, the board shall proceed with the hearing. Subpoenas issued by the board and served in accordance with the law, shall compel the attendance of witnesses and shall cause evidence to be produced at the hearing. The board shall administer such oaths as may be necessary for the proper conduct of the hearings. The accused shall have the right to appear personally or be represented by counsel, or both, to produce witnesses or evidence in his own behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall keep a verbatim transcript record of all proceedings at any hearing which is conducted for disciplinary purposes. All written complaints filed with the board will be investigated according to board rules. If the investigation reveals grounds to support the charges made against the licensee, the executive director of the board will initiate the hearing procedure in accordance with chapter 28-32. If the accused licensee is found guilty to have committed any of the charges in the complaint, the board may reprimand the licensee, place the licensee on probationary status subject to reasonable terms of probation, deny, suspend, or revoke a license. In addition, if the respondent is found by the board to have committed any of the acts set out in this section for which discipline may be imposed, the board may tax costs and disbursements against the respondent as in civil actions, and may further impose a penalty fee if the respondent is found by the board to have committed any of the acts set out in subsections 1 through 4 of section 43-12.1-15. Any fee, costs, and disbursements imposed by the board against the respondent may be paid within a reasonable time and through reasonable periodic payments as specified in the board's order. Any penalty fee imposed may not exceed five dollars for each day or fraction of a day in which the respondent is found by the board to have committed any of the prohibited acts as set out herein, and may not exceed a total of one thousand dollars. A suspended license may be reinstated at any time by the board. A revoked license may be reissued after one year at the board's discretion. An appeal from the final decision of the board, which suspends or revokes a license to practice nursing in this state may be taken to the district court of Burleigh County in accordance with

the provisions of chapter 28-32. The board shall furnish to the boards of nursing of other states, and to health agencies of this state, a list of the names and addresses of persons whose licenses licensees who have been revoked or suspended for cause disciplined by the board.

Approved April 4, 1987

Filed April 6, 1987

CHAPTER 517

SENATE BILL NO. 2294
(Senators Peterson, Yockim)
(Representatives Solberg, A. Olson, V. Olson)

OPTOMETRY PRACTICE

AN ACT to create and enact two new sections to chapter 43-13 of the North Dakota Century Code, relating to the practice of optometry, certification and notification requirements, and standard of care for optometrists; to amend and reenact section 43-13-01 of the North Dakota Century Code, relating to definitions; and to repeal section 43-13-13.1 of the North Dakota Century Code, relating to the authority of the board of optometry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. Optometry shall be defined as "Board" means the North Dakota state board of optometry.
2. "Optometry" means a primary health care profession whose practitioners are engaged in the refraction evaluation of disorders of the human eye and the examination, diagnosis, and treatment thereof, together with its appendages, without the use of surgery, and by using such objective or subjective techniques as are necessary to enable recognition of disease for medical referral. Included within the definition shall be the application of ocular diagnostic pharmaceutical agents as authorized by this chapter, and the determination and interpretation of any visual, muscular, neurological or anatomical anomaly of the eye, which may be aided, relieved or corrected through visual training procedures or through the use of lenses, prisms, filters, or combinations thereof held either in contact with the eye, or in frames or mountings. Any person so engaged in visual training procedures or who

employs or prescribes lenses, prisms, filters, or combinations thereof held either in contact with the eye, or in frames or mountings, to aid, relieve or correct any visual anomaly, or holds himself out as being able to do so, shall be deemed to be engaged in the practice of optometry and must have a certificate of registration, as herein provided by this chapter.

2. The word "board" shall mean the North Dakota state board of optometry.
3. The term "practicing "Diagnosis and treatment" means the determination, interpretation, and treatment of any visual, muscular, neurological, or anatomical anomaly of the eye which may be aided, relieved, or corrected through visual training procedures or through the use of lenses, prisms, filters, ophthalmic instruments, pharmaceutical agents, or combinations thereof, held either in contact with the eye, or in frames or mountings, as further authorized by this chapter. Laser therapy and the use of invasive surgery are not permitted under this chapter, except superficial foreign bodies may be removed and primary care procedures may be performed. The treatment of glaucoma is not permitted under this chapter.
4. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic pharmaceutical agents. The term does not include pharmaceutical agents that have no documented use in the treatment of ocular-related disorders or diseases, oral cortico-steroids, and controlled substances, as defined in chapter 19-03.1. As used in this subsection:
 - a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered for the evaluation and diagnosis of disorders of the human eye including anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains, and pharmaceutical agents to evaluate abnormal pupil responses.
 - b. "Therapeutic pharmaceutical agents" means topically administered and prescribed pharmaceutical agents for treatment of ocular-related disorders or disease, locally administered pharmaceutical agents for primary eye care procedures, oral anti-infective agents, oral antihistaminic agents, and oral analgesics for the treatment of ocular-related disorders or diseases. The dispensing of therapeutic pharmaceutical agents is not permitted under this chapter.
5. "Practicing optometry" shall mean means:
 - a. Displaying a sign or in any way advertising as an optometrist.

- b. Employing any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof.
- c. Engaging in any manner in the practice of optometry.

SECTION 2. Two new sections to chapter 43-13 of the North Dakota Century Code are hereby created and enacted to read as follows:

Practice of optometry - Certification requirements - Notification.

1. Any person engaged in visual training procedures or who employs or prescribes lenses, prisms, filters, ophthalmic instruments, or combinations thereof, held either in contact with the eye, or in frames or mounting, to aid, relieve, or correct any visual or ocular anomaly, or holds oneself out as being able to do so, is deemed to be engaged in the practice of optometry.
2. Before any optometrist may prescribe and administer pharmaceutical agents in the treatment and management of ocular diseases, the optometrist must first be certified or qualify for certification in the use of diagnostic pharmaceutical agents. For additional certification to prescribe and administer pharmaceutical agents in the treatment and management of ocular disease, the board shall require at least seventy-six hours of didactic instruction and twenty-four hours of clinical application of pharmaceutical agents for the treatment and management of ocular diseases. The course for therapeutic certification must be provided by an institution accredited by a regional or professional accrediting organization that is recognized and approved by the United States department of education or the council on postsecondary accreditation.
3. The board shall notify the board of pharmacy in writing, and on an annual basis or when other optometrists are certified, of the specific optometrists certified by the board in the use of pharmaceutical agents.

Standard of care - When consultation with physician required.

1. An optometrist certified by the board in the use of pharmaceutical agents as provided in this chapter must be held to the same standard of care in the use of such agents as are physicians licensed by the state board of medical examiners.
2. Any optometrist authorized by the board to use pharmaceutical agents must consult with a physician duly licensed to practice medicine when any diseased or pathological conditions of the eye do not respond to treatment. The consultation must be documented in the patient's record.

SECTION 3. REPEAL. Section 43-13-13.1 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 518

SENATE BILL NO. 2176
(Committee on Judiciary)
(At the request of the Board of Pharmacy)

BOARD OF PHARMACY POWERS

AN ACT to amend and reenact subsections 1 and 14 of section 43-15-10 of the North Dakota Century Code, relating to the powers of the board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 14 of section 43-15-10 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. To place on probation, reprimand, or fine any pharmacy, pharmacist, or registered pharmacist; or refuse to issue or renew, or, may suspend, revoke, or restrict, or cancel, the certificate, of registration, or permit, or license of any pharmacy, pharmacist, or registered pharmacist, upon one or more if any of the following grounds apply and the pharmacy, pharmacist, or registered pharmacist:
 - a. Is addicted to any alcohol or drug habit.
 - b. Uses any advertising statements of a character tending to deceive or mislead the public.
 - c. Is a chronic or persistent inebriate subject to drug or alcohol dependency or abuse.
 - d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.
 - e. Permits or engages an unauthorized person to practice pharmacy.
 - f. Is mentally or physically incompetent to handle his pharmaceutical duties.
 - g. Is guilty of fraud, deception, or misrepresentation in passing ~~his~~ the pharmacist examination.

- h. Is found by the board in violation of any of the provisions of the laws regulating drugs, pharmacies, and pharmacists or the rules and regulations established by the board.
- i. Unprofessional Is found to have engaged in unprofessional conduct as that term is defined by the rules and regulations of the board.
- j. Incapacity Is subject to incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.
- k. Is found guilty by a court of competent jurisdiction of one or more of the following:
- (1) A felony, as defined by the statutes of North Dakota.
 - (2) Any act involving moral turpitude or gross immorality.
 - (3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.
- l. Fraud Commits fraud or intentional misrepresentation by a ~~pharmacist~~ in securing the issuance or renewal of a certificate of registration or pharmacy permit.
- m. Sells, dispenses, or compounds any drug while on duty and while under the influence of alcohol or while under the influence of a controlled substance without a practitioner's prescription.
14. To make, adopt, amend, and repeal rules as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, chapters 19-02 and 19-02.1 as those chapters pertain to drugs, subject to approval of the director of the state laboratories department, and chapter 19-03.1 subject to approval of the controlled substances board.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 519

SENATE BILL NO. 2182
(Committee on Judiciary)
(At the request of the Board of Pharmacy)

BOARD OF PHARMACY FILES

AN ACT to amend and reenact subsection 15 of section 43-15-10 of the North Dakota Century Code, relating to confidentiality of investigative files of the board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 43-15-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. The board or its authorized representatives may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-15, ~~chapter chapters 19-02 and 19-02.1~~ that pertain to drugs, ~~chapter chapters 19-03.1, 19-03.2, and 19-04,~~ or of the rules of the board. Board investigative files are confidential and may not be considered public records or open records for purposes of section 44-04-18, until a complaint is filed or a decision made by the board not to file a complaint.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 520

SENATE BILL NO. 2171
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

PHARMACY PRESCRIPTION FILING

AN ACT to amend and reenact section 43-15-31, subsection 6 of section 43-15-35, and section 43-15-42 of the North Dakota Century Code, relating to physicians' prescriptions to be filed and preserved, requirements for a permit to operate a pharmacy, and the penalty for violation of law regulating pharmacies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-15-31. Physicians' prescriptions to be filed and preserved. Every registered pharmacist in the state shall file, or cause to be filed, any physician's prescription, or a copy thereof, which has been compounded or dispensed in his pharmacy or drug store. The prescription or a copy of the prescription shall be preserved for at least ~~two~~ five years after it has been filled. The pharmacist may furnish a copy of any prescription to the party presenting it on the request of such party only.

SECTION 2. AMENDMENT. Subsection 6 of section 43-15-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. The pharmacy has ~~on file~~ within the pharmacy at all times the latest ~~decennial~~ revision of the United States Pharmacopoeia and the latest edition of the National Formulary, Pharmacopoeia/National Formulary and supplements thereto, or the United States Pharmacopoeia Dispensing Information, Volumes I and II (USPDI). ~~These books must be in evidence at all times to the board and its properly authorized agents.~~

SECTION 3. AMENDMENT. Section 43-15-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-15-42. Penalty for violation of law rule regulating pharmacies. Any person who violates any rule ~~or regulation~~ legally adopted by the board pursuant to this chapter is guilty of an infraction. ~~Upon any conviction of a permittee hereunder, the permit or renewal of such violator shall be null and void.~~

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 521

SENATE BILL NO. 2173
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

OUT-OF-STATE PHARMACIES' PERMITS

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to out-of-state pharmacies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Out-of-state pharmacies. Any pharmacy operating outside the state which ships, mails, or delivers in any manner a dispensed prescription drug or legend drug into North Dakota shall obtain and hold a pharmacy permit issued by the North Dakota state board of pharmacy and that part of the pharmacy operation dispensing the prescription for a North Dakota resident shall abide by state law and rules of the board.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 522

SENATE BILL NO. 2175
(Committee on Judiciary)
(At the request of the Board of Pharmacy)

PHARMACIST DISCIPLINARY ACTIONS

AN ACT to amend and reenact subsection 1 of section 43-15-42.1 of the North Dakota Century Code, relating to disciplinary action of the board of pharmacy; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-15-42.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon the finding of the existence of grounds for discipline of any person holding, seeking, or renewing a certificate of registration, permit, or license under this chapter, the board may impose one or more of the following penalties:
 - a. Suspension of the offender's certificate of registration, permit, or license for a term to be determined by the board.
 - b. Revocation of the offender's certificate of registration, permit, or license.
 - c. Restriction of the offender's certificate of registration, permit, or license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board.
 - d. Refusal to issue or renew offender's certificate of registration, permit, or license.
 - e. Placement of the offender on probation or the offender's certificate of registration, permit, or license under suspension and supervision by the board for a period to be determined by the board.

- f. Cancellation of the offender's certificate of registration, permit, or license.
- g. Reprimand.
- h. Imposition of a fine not to exceed one thousand dollars for each offense involving diversion of controlled substances or a fine not to exceed five hundred dollars for any other offense, with the sanction that the certificate of registration, permit, or license may be suspended until the fine is paid to the board.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 523

SENATE BILL NO. 2177
(Committee on Judiciary)
(At the request of the Board of Pharmacy)

IMPAIRED PHARMACISTS PROGRAM

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to an impaired pharmacists program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Impaired pharmacists program.

1. Any pharmaceutical peer review committee may report relevant facts to the board relating to the acts of any pharmacist in this state if they have knowledge relating to the pharmacist which, in the opinion of the peer review committee, might impair competency due to dependency on alcohol or drugs, abuse of alcohol or drugs, or due to physical or mental illness, or which might endanger the public health and safety or provide grounds for disciplinary action under chapter 43-15.
2. Any committee of a professional association comprised primarily of pharmacists, its staff, or any district or local intervenor participating in a program established to aid pharmacists impaired by substance abuse or mental or physical illness may report in writing to the board the name of the impaired pharmacist together with the pertinent information relating to the impairment. The board may report to any committee of such professional association or the association's designated staff information which it may receive with regard to any pharmacist who may be impaired by substance abuse or mental or physical illness.
3. Upon a determination by the board that a report submitted by a peer review committee or professional association committee is without merit, the report must be expunged

from the pharmacist's individual record in the board's office. A pharmacist or a pharmacist's authorized representative may on request examine the pharmacist's peer review or the pharmaceutical association's committee report submitted to the board and place into the record a statement of reasonable length of the pharmacist's view with respect to any information in the report.

4. Notwithstanding the provisions of section 44-04-18, the records and proceedings of the board, compiled in conjunction with an impaired pharmacist peer review committee, are confidential and are not to be considered public records or open records unless the affected pharmacist so requests; provided, however, the board may disclose this confidential information only if any of the following apply:
 - a. In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.
 - b. To the pharmacist licensing or disciplinary authorities of other jurisdictions.
 - c. Under an order of a court of competent jurisdiction.
5.
 - a. No employee or member of the board, peer review committee member, pharmaceutical association committee member, or pharmaceutical association district or local intervenor furnishing in good faith information, data, reports, or records for the purposes of aiding the impaired pharmacist may by reason of furnishing the information be liable for damages to any person.
 - b. No employee or member of the board or the committee, staff, or intervenor program is liable for damages to any person for any action taken or recommendations made in good faith by the board, committee, or staff.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 524

SENATE BILL NO. 2221
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

BOARD OF PHARMACY DISCIPLINARY PROCEEDINGS

AN ACT to amend and reenact section 43-15-45 of the North Dakota Century Code, relating to costs of prosecution in disciplinary proceedings of the board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-15-45. Costs of prosecution - Disciplinary proceedings. All costs and expenses collected in prosecutions under this chapter, except court costs, fees of officers, and witness fees, shall be paid to the secretary of the board. In any order or decision issued by the board in resolution of a disciplinary proceeding, the board may direct any certificate, permit, or license holder, or any pharmacy or pharmacist found not in compliance, guilty, or in violation of one or more of the grounds set forth in subsection 1 of section 43-15-10, to pay the board a sum not to exceed the reasonable and actual costs of the investigation and prosecution of the case, with the sanction that the certificate of registration, permit, or license may be suspended until the costs are paid to the board.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 525

HOUSE BILL NO. 1563
(Aas)

PHYSICIAN QUALIFICATIONS AND DISCIPLINE

AN ACT to create and enact section 43-17-30.1 of the North Dakota Century Code, relating to disciplinary action against a licensed physician; to amend and reenact subsection 1 of section 43-17-02, subsection 2 of section 43-17-03, sections 43-17-07, 43-17-11, 43-17-14, 43-17-17, 43-17-18, 43-17-24, 43-17-25, 43-17-30, and 43-17-31 of the North Dakota Century Code, relating to duties of the board of medical examiners and physician qualifications and grounds for discipline; and to repeal sections 43-17-08, 43-17-09, 43-17-10, 43-17-13, 43-17-16, 43-17-20, 43-17-22, 43-17-26, 43-17-27, 43-17-28, 43-17-29, 43-17-32, 43-17-33, 43-17-35, 43-17-36, 43-17-39, and 43-17.1-07 of the North Dakota Century Code, relating to the procedures of the board of medical examiners and the regulation of the practice of medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-17-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Students who have had training in approved schools of medicine or osteopathy and who are continuing their training and performing the duties of an intern or a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any hospital operating under the supervision of a staff of physicians, the members of which are licensed to practice medicine and which hospital is approved for internships and residencies by the appropriate accrediting agency; and students practicing under the direction of a preceptor while enrolled in and regularly attending an approved medical school residency program accredited by the accreditation council on graduate medical education.

SECTION 2. AMENDMENT. Subsection 2 of section 43-17-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Be a resident of and duly licensed to practice medicine and surgery in this state provided, however, that the D-O- on the board must be licensed to practice medicine pursuant to this chapter.

SECTION 3. AMENDMENT. Section 43-17-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-07. Meetings of the board -- Seal of board. The board shall hold at least ~~two~~ three meetings in each calendar year for the examination of applicants for licensure, and may call such special meetings as may be necessary. The meetings shall be held at such places as the board may designate. ~~The board shall have a seal.~~

SECTION 4. AMENDMENT. Section 43-17-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-11. Records of board - Prima facie evidence. The board shall keep a record of all of its proceedings and a register of all applicants applications for license. Application records must be preserved for at least six years beyond the disposition thereof or the last annual registration of the licensee, whichever is longer. Such record and register shall be prima facie evidence of all matters therein recorded. The register shall contain-

- 1- The application for license.
- 2- The age of the applicant.
- 3- The time the applicant spent in the study of medicine and in his studies preliminary thereto and the nature of such studies.
- 4- The name and location of all institutions, medical or otherwise, granting the applicant degrees or certificates of attendance on lectures and classes in medicine and surgery and studies preliminary thereto.
- 5- A statement as to whether the applicant was rejected or licensed by the board.

SECTION 5. AMENDMENT. Section 43-17-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-14. Compensation - Expenses of board and the members thereof. A member of the board shall receive for each day during which he actually is engaged in the performance of the duties of his office such per diem as shall be fixed by the board. and, He also shall receive such mileage as is provided in section 54-06-09 and five dollars a day travel expense while absent from home. The secretary

of the board shall receive such salary or other compensation, and such allowance for clerical and other expenses of the board as the board shall determine.

SECTION 6. AMENDMENT. Section 43-17-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-17. Application for license. In order to obtain a license to practice medicine in this state, an application shall be made to the board through the secretary-treasurer. The application shall be upon the form adopted by the board and shall be made in the manner prescribed by it. ~~The applicant shall furnish the board with satisfactory evidence of his good moral character.~~

*** SECTION 7. AMENDMENT.** Section 43-17-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-18. Qualifications of applicant for examination. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

1. The applicant is at least eighteen years of age. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;
2. The applicant is a graduate of a reputable medical or osteopathic college approved by the board.
- 3- The applicant has satisfactorily completed a one-year residency in a hospital approved by the board; or, at the discretion of the board, has completed other postgraduate training or approved hospital residency training as the board deems equivalent to the residency. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;
- 4- 3. An If the applicant who is a graduate of a medical or osteopathic school college located outside the United States must have that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, and must pass an examination or examinations given or approved by the board to establish proficiency in writing and speaking English. If the foreign medical or osteopathic school is not approved by the board, and the successful completion of three years of

* NOTE: Section 43-17-18 was also amended by section 1 of Senate Bill No. 2334, chapter 526.

residency training in an postgraduate training in a program approved hospital and a passing grade on the federation of state medical boards of the United States licensing examination are required of the applicant in lieu of approval by the board of the medical or osteopathic college from which the applicant graduated by the board or by an accrediting body approved by the board;

4. Successful completion of a medical licensure examination satisfactory to the board;
5. Physical, mental, and professional capability for the practice of medicine in a manner acceptable by the board; and
6. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act which would constitute grounds for disciplinary action under this chapter; the board, in its discretion, may modify this restriction for cause.

SECTION 8. AMENDMENT. Section 43-17-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-24. Physicians register annually with the board. On or before January first of each year the due date established by the board, every person legally licensed to practice medicine and surgery within this state shall file with the secretary-treasurer of the board a registration statement upon blanks prepared and provided by the board and shall pay to the secretary-treasurer the annual registration fee. No person may engage in the practice of medicine in this state without a current registration certificate issued by the board.

SECTION 9. AMENDMENT. Section 43-17-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-25. Annual registration fee. The annual registration fee for any person licensed to practice medicine in the state shall be fixed by regulation of the board and not to exceed one hundred dollars. All fees shall be paid to and held by the secretary-treasurer of the board and shall be subject to disbursement by the board in performing its duties.

SECTION 10. AMENDMENT. Section 43-17-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-30. Payment of delinquent registration fee - Reinstatement. Any practitioner of medicine and surgery who has been licensed to practice in this state by the board, and who has been suspended from practice and whose license has been revoked because of failure to pay the annual registration fee, may, at the discretion of the

board, be reinstated, and have the suspension revoked, and the license renewed by paying to the secretary-treasurer of the board the amount of the registration fee which is then in default.

SECTION 11. Section 43-17-30.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

43-17-30.1. Disciplinary action. The board is authorized to take disciplinary action against a licensed physician by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the practice of medicine.
5. Reprimand.
6. Letter of censure.
7. Letter of concern.

SECTION 12. AMENDMENT. Section 43-17-31 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-31. Revocation, suspension, or refusal to grant license-- Grounds for disciplinary action --Record. The board may refuse to grant a license to practice medicine in this state or may suspend or revoke such license and cause the licensee's name to be removed from the record in the office of the register of deeds. Disciplinary action may be imposed against a physician upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The performance of an unlawful abortion or assisting or advising the performance of any unlawful abortion. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. The conviction of an offense any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine and surgery; or the board determines, following conviction of the person of any offense, that he is not sufficiently

rehabilitated. The rehabilitation determination shall be made in accordance with section 12-1-33-02-1 or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.

4. Becoming addicted to a drug or intoxicants to such a degree as to render the licensee unsafe or unfit to practice medicine Habitual use of alcohol or drugs.
5. Sustaining any physical or mental disability which renders the further practice of medicine dangerous Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. The use of any false or fraudulent statement in any document connected with the practice of medicine Obtaining any fee by fraud, deceit, or misrepresentation.
8. Knowingly performing any act which in any way assists an unlicensed person to practice medicine Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or terms of a medical practice act The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board.
10. The practice of medicine under a false or assumed name.
11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. Obtaining a fee as personal compensation or gain for an employer or a person on fraudulent representation The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be permanently cured.
13. The willful or negligent violation of privileged communication the confidentiality between physician and patient, except as required by law.
14. Failure The failure of a doctor of osteopathy to designate his school of practice in the professional use of his name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.

15. The violation of the restrictions or conditions of a license limiting the practice of medicine to services in the employ of the state hospital Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
17. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. The payment or receipt, directly or indirectly, of any fee, commission, rebate or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, or associations.
19. The failure to furnish the board, its investigators or representatives, information legally requested by the board.
20. The failure to transfer medical records, except those relating to psychiatric treatment which shall be governed by board rule, to another physician or to supply copies thereof to the patient or to his or her representative when requested to do so by the patient or his or her designated representative. A reasonable charge for record copies may be assessed.
21. A continued pattern of inappropriate care as a physician, including unnecessary surgery.

The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

SECTION 13. REPEAL. Sections 43-17-08, 43-17-09, 43-17-10, 43-17-13, 43-17-16, 43-17-20, 43-17-22, 43-17-26, 43-17-27, 43-17-28, 43-17-29, 43-17-32, 43-17-33, 43-17-35, 43-17-36, 43-17-39, and 43-17.1-07 of the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 526

SENATE BILL NO. 2334
(Waldera, Maixner, Streibel)

FOREIGN-TRAINED PHYSICIANS

AN ACT to amend and reenact subsection 4 of section 43-17-18 of the North Dakota Century Code, relating to qualifications of a foreign-trained applicant for a license to practice medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 43-17-18 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. An applicant who is a graduate of a medical or osteopathic school located outside the United States must have a certificate issued by the educational council for foreign medical graduates and must pass an examination or examinations given or approved by the board to establish proficiency in writing and speaking English. If the foreign medical or osteopathic school is not approved by the board, the successful completion of three years of residency training in an approved hospital and a passing grade on the federation of state medical boards of the United States licensing examination are required of the applicant in lieu of approval by the board of the medical or osteopathic college from which the applicant graduated. The board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 43-17-18 was also amended by section 7 of House Bill No. 1563, chapter 525.

CHAPTER 527

SENATE BILL NO. 2342
(Senators Lips, Holmberg, W. Meyer)
(Representatives Belter, R. Berg)

PLUMBERS' LICENSE FEES

AN ACT to amend and reenact sections 43-18-13 and 43-18-17 of the North Dakota Century Code, relating to the license fees of plumbers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-18-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18-13. License - How obtained - Fee. Any person qualified under the rules of the board who desires to take the examination to become a registered and licensed plumber shall make application to the board therefor and pay to the treasurer of the board the examination fee. Such fee shall not exceed ~~one~~ two hundred dollars for a master plumber's certificate and license and ~~fifty one~~ hundred dollars for a journeyman plumber's certificate and license. The board, when the condition of its fund permits and when in its judgment it is deemed advisable, may reduce the amount of the examination fees, but it may not increase the same above the amount ~~hereinbefore~~ specified in this section. Any such change shall be adopted by the board to take effect on the first day of January following its action and shall apply to all examination fees in the classes specified in the ruling. The applicant shall ~~present himself~~ appear at the next regular meeting of the board for examination of applicants. If upon examination the applicant is found by the board to be qualified as a master plumber or journeyman plumber, or both, it shall issue to ~~him~~ the applicant a certificate of registration and license which shall entitle ~~him~~ the applicant to do the work and be a plumber as specified in the license. A master plumber's and journeyman plumber's license may be issued to one and the same person, and the holder of a master plumber's license may be granted a journeyman plumber's license without the payment of the journeyman's fee. All certificates and licenses shall be numbered consecutively and shall not be transferable, and no person shall work under the license issued to another person. Should a person fail upon examination to qualify as a master or journeyman plumber, such person shall have the right to review the examination to

determine the reasons for failure and shall have the right to appeal to the board.

SECTION 2. AMENDMENT. Section 43-18-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18-17. Renewal of license - Fee. A certificate and license issued under the provisions of this chapter shall be valid for only one year and shall expire on the thirty-first day of December of the year in which it was issued. The certificate shall be renewed by the board upon application made within thirty days after the expiration thereof and on the payment of a sum not to exceed ~~one~~ two hundred dollars for a master plumber's certificate and license, and the sum of ~~fifty~~ one hundred dollars for a journeyman plumber's certificate and license. The board, when the condition of its fund permits and when in its judgment it is deemed advisable, may reduce the amount of the renewal fees, but it may not increase the same above the amount ~~hereinbefore~~ specified in this section. Any such change shall be adopted by the board to take effect on the first day of January following its action and shall apply to all renewals in the classes specified in the ruling.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 528

SENATE BILL NO. 2350
(Senators Lips, Holmberg, W. Meyer)
(Representatives Belter, R. Berg)

SEWER AND WATER INSTALLATION

AN ACT to create and enact chapter 43-18.2 of the North Dakota Century Code, relating to the installation and repair of sewer and water installations; to provide a continuing appropriation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Chapter 43-18.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

43-18.2-01. **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of plumbing.
2. "Sewer and water contractor" means any person who plans and manages the installation and repair of building sewer and water service.
3. "Sewer and water installation" means the installation of building sewer and water service and the repair of existing building sewer and water service.
4. "Sewer and water installer" means any person who installs and repairs building sewer and water service.

43-18.2-02. **Duties of the board.** The board shall:

1. Enforce this chapter.
2. Adopt rules not inconsistent with this chapter for the examination, regulation, and licensing of sewer and water contractors and sewer and water installers.
3. Exempt from the provisions of sections 43-18.2-06, 43-18.2-07, and 43-18.2-08 those North Dakota sewer and water contractors and installers as defined in section

43-18.2-01 who have at least one year work experience prior to July 1, 1987.

43-18.2-03. Sewer and water installer licenses. The board shall issue a special license to any person before that person installs and repairs any sewer and water plumbing installation. This license allows the licensee to do the plumbing necessary for sewer and water installation. A sewer and water installer license is not required of licensed master plumbers and journeyman plumbers.

43-18.2-04. Sewer and water installer apprentice license. All applicants for a building sewer and water installer apprentice license shall complete an application identifying the building sewer and water installer under whose supervision the applicant is working. The license is without charge for two years and must be renewed annually.

43-18.2-05. Out-of-state applicants. An applicant for a sewer and water contractor's license or a sewer and water installer's license from out of state may take the examination upon showing by affidavits that the applicant has experience in the state in which the applicant is licensed. This experience must be the same as is required of applicants from this state. The board shall provide applicants with application forms and affidavit forms necessary to comply with this section. The secretary-treasurer of the board shall investigate the validity of the affidavits. A rejected application shall be treated as a contested case.

43-18.2-06. Experience for testing. An applicant for a sewer and water installer's license shall show evidence of two years' experience as a building sewer and water installer apprentice in this state. Applicants for a sewer and water installation contractor's license must have one year's experience as an installer in this state. All applicants shall show that their work complies with the state plumbing code. Proof of experience must be shown by affidavits which the board may investigate. The board shall provide applicants with application forms. If the application is rejected, the matter must be treated as a contested case.

43-18.2-07. Examination requirements. The examination for applicants for licensure must consist of:

1. Questions pertaining to the application and maintenance of basic principles of sewer and water installation.
2. Questions which require the application of the state plumbing code and the state industrial safety code to building sewer and water installation.

The questions for the sewer and water contractor and the building sewer and water installer need not be the same. The passing grade for the building sewer and water contractor must be eighty percent, and the sewer and water installer's passing grade must be seventy percent.

43-18.2-08. Examination fees. An applicant for a sewer and water contractor's license shall pay an examination fee of one hundred dollars, and an applicant for a building sewer and water installer's license shall pay an examination fee of twenty-five dollars before taking the examination for the first time. The reexamination fee is fifty dollars for a sewer and water contractor's license and ten dollars for a sewer and water installer's license. No additional fee may be charged for the first year of licensure. No applicant may be examined for the same license more often than every three months.

43-18.2-09. License renewal fees. The license renewal fee for a sewer and water installation contractor after the first year of licensure is one hundred dollars per year, and the license renewal fee for a sewer and water installer after the first year of licensure is twenty-five dollars per year. The license renewal fee for a sewer and water installer apprentice after the first two years of licensure is twenty-five dollars.

43-18.2-10. Revocation of licenses. The board may revoke any license issued under this chapter if the licensee has:

1. Committed an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon a holder's ability to serve the public as a sewer and water contractor, sewer and water installer, or a sewer and water installer apprentice, or the board determines, following conviction of any offense, that a holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Committed a fraud in obtaining the license;
3. Permitted the use of the license in violation of this chapter; or
4. Performed work or business in an incompetent manner as determined by the board.

43-18.2-11. Administration of funds - Continuing appropriation. All fees and moneys obtained by the board through the administration of this chapter must be used for the regulation of the business of sewer and water installation and repair, and are appropriated to the board for this use. This appropriation is a continuing appropriation of all such funds. The handling and administration of the funds must otherwise be in accordance with section 54-44-12.

43-18.2-12. Violation - Penalty. Any person who willfully violates this chapter is guilty of an infraction.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 529

HOUSE BILL NO. 1595
(Moore)

ENGINEERS' LIABILITY

AN ACT to create and enact a new section to chapter 43-19.1 of the North Dakota Century Code, relating to liability of engineers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-19.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Engineer not liable for contractor's fault unless responsibility assumed - Liability for own negligence. An engineer shall not be liable for the safety of persons or property on or about a construction project site, or for the construction techniques, procedures, sequences and schedules, or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees, unless he assumes responsibility therefor by contract or by his actual conduct. Nothing herein shall be construed to relieve an engineer from liability for his negligence, whether in his design work or otherwise.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 530

HOUSE BILL NO. 1450
(R. Berg, Oban)

REAL ESTATE LICENSE EXCEPTIONS

AN ACT to amend and reenact section 43-23-07 of the North Dakota Century Code, relating to exceptions to real estate licensure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-07. Real estate brokers, salesmen, or mortgage brokers -
Exceptions. The term "real estate broker", "real estate salesman",
or "mortgage broker" ~~shall not be held to~~ does not include:

1. Any person, partnership, association, or corporation who as is a bona fide owner or lessor ~~shall perform or who accepts or markets leasehold interests in residential or agricultural property and performs~~ any of the aforesaid acts with reference to property owned or leased by them, nor ~~shall~~ does it apply to regular employees thereof, where ~~such the~~ acts are performed in the regular course of or as an incident to the management of ~~such the~~ property and the investment therein.
2. An attorney at law, admitted to practice in ~~North Dakota this state~~, handling sales of real estate in the course of estate or guardianship administration in county court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
3. Any person selling real estate as an auctioneer, provided ~~such the~~ sale is advertised as a bona fide public auction.
4. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of ~~any such the~~ bank or trust company.

5. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.
6. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
7. Public officers while performing their duties as such.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 531

HOUSE BILL NO. 1093
(Committee on Industry, Business and Labor)
(At the request of the Real Estate Commission)

REAL ESTATE COMMISSION PROCEEDINGS

AN ACT to amend and reenact sections 43-23-11.1 and 43-23-13 of the North Dakota Century Code, relating to investigations, licenses, hearings, appeals, and fees of the North Dakota real estate commission; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-11.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-11.1. Investigations, grounds for refusal, suspension or revocation of license - Hearing - Appeal.

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state, and shall have the power to suspend or revoke a license, impose a monetary fine, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
 - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
 - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to his injury or damage.

- d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom he acts.
- e. Failure to account for or to remit, within a reasonable time, any moneys coming into his possession belonging to others; commingling funds of others with his own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which shall contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
- f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction shall be conclusive evidence of conviction in such cases.
- g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to his principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
- h. Failing or refusing upon demand to produce any document, book, or record in his possession or under his control, concerning any real estate transaction under investigation by the commission.
- i. Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent.
- j. Refusing, because of race, color, national origin or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
- k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
- l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate salesman under this chapter.

- m. Failing to disclose to an owner his intention or true position if he directly or indirectly through a third party purchases for himself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with his office for sale or lease.
- n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
- o. Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed, and to retain true copies of such statements in his files.
- p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
- q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
- r. Accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom he is licensed as a salesman.
- s. If the licensee is a broker, allowing any unlicensed salesman to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.
- t. Failure of a salesman to place with his employing broker for deposit in the brokerage trust account all real estate trust moneys received by him within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from his salesman. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys shall then be deposited during the next business day of the depository.

- u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
 - v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of his licensed privilege.
 - w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salesmen, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
2. If the commission declines or fails to approve an application submitted to it, it shall immediately give notice of that fact to the applicant, and upon request from such applicant, filed within twenty days after the receipt of such notice, shall fix a time and place for hearing, of which twenty days' notice shall be given to such applicant and to other persons interested or protesting, to offer evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all other applicable provisions of this chapter have been met, and permit the applicant to take the examination to determine whether he shall be licensed, or it may sustain its prior decision refusing to approve the application.
3. No license shall be revoked or suspended, no monetary fine imposed, nor any letter of reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension or, revocation, fine, or reprimand. The provisions of chapter 28-32, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals, shall apply to and govern all proceedings for suspension or, revocation, fine, or reprimand of licenses or licensees, except where inconsistent with this chapter.

4. Any monetary fine imposed may not exceed the sum of one thousand dollars. All fines collected must be deposited in the commission's license fee account.

SECTION 2. AMENDMENT. Section 43-23-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-13. Fees. Fees for real estate brokers, mortgage brokers, and real estate salesmen are as follows:

1. A fee of forty dollars shall accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of forty dollars.
3. For an individual's real estate salesman's license and for each annual renewal of the license, a fee of thirty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.
5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesman's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee ~~of fifteen dollars~~ of twenty dollars.
9. For each change of name, a fee of ten dollars.

Approved March 19, 1987

Filed March 20, 1987

CHAPTER 532

HOUSE BILL NO. 1176
(Committee on Industry, Business and Labor)
(At the request of the Office of Management and Budget)

VARIOUS LICENSE FEES

AN ACT to amend and reenact subsection 2 of section 43-31-14, subsection 2 of section 43-33-08, section 43-33-11, subsection 1 of section 53-06.1-03, section 57-36-02, subsection 1 of section 62.1-01-01, and section 62.1-04-03 of the North Dakota Century Code, relating to the license fees for detection of deception operators, hearing aid dealers and fitters, hearing aid trainees, gaming organizations, definition of dangerous weapon, concealed weapon licenses, and distributors at wholesale and retail of tobacco products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-31-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The annual license fee is ~~twenty-five~~ thirty-five dollars, and shall be due and payable on or before October first of each year.

SECTION 2. AMENDMENT. Subsection 2 of section 43-33-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Upon receiving an application as provided under this section and accompanied by a fee of ~~twenty-five~~ thirty-five dollars, the department shall issue a trainee permit which shall enable the applicant to engage in the training of fitting and sale of hearing aids for a period of one year under the direct supervision of a person holding a valid hearing aid dealers and fitters license. The trainee shall train in the same place of business as that of the supervisor and shall be required to have fulfilled at least thirty hours of book and visual aid training during office hours and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before his first public contact

alone. A trainee shall not be permitted to deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training the trainee must spend one week in the office or place of business within any period of sixty days, and one week with the supervisor within any period of sixty days. The trainee shall not make any sale of a hearing aid without first consulting with his supervisor and obtaining the supervisor's approval for such sale.

SECTION 3. AMENDMENT. Section 43-33-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-33-11. Annual renewal of license - Fees - Effect of failure to renew. Each person who engages in the fitting and sale of hearing aids shall annually, on or before January thirtieth, pay to the department a fee of ~~fifty~~ seventy-five dollars, together with a certificate showing attendance for a minimum of two days at a school or seminar, approved by the board, pertaining to the fitting and sales of hearing aids, for a renewal of his license and shall keep such license conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate licenses shall be issued by the department for posting in each location. A thirty-day grace period shall be allowed after January thirtieth, during which time licenses may be renewed on payment of a fee of ~~seventy-five~~ one hundred dollars together with the certificate of annual training to the department. After expiration of the grace period, the department may renew such licenses upon the payment of one hundred ~~twenty-five~~ dollars together with the certificate of annual training to the department. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, provided such renewal application is made within two years from the date of such expiration and is accompanied with a certificate of training as herein designated during the twelve months immediately preceding the date of application.

*** SECTION 4. AMENDMENT.** Subsection 1 of section 53-06.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a ~~fifty~~ one hundred dollar license fee. An eligible organization may apply for local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. To obtain local authorization, the eligible organization

*** NOTE:** Section 53-06.1-03 was also amended by section 1 of House Bill No. 1281, chapter 611, and by section 1 of Senate Bill No. 2064, chapter 612.

shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners for a license. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general and must be accompanied by a ten dollar permit fee payable to the city or county governing body.

SECTION 5. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, shall secure a license from the attorney general before engaging in such business or continuing to engage therein. A separate application and license shall be required for each distributor at each outlet or place of business within the state, and a separate dealer's license shall be required for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer shall be granted a distributor's license except a retailer who also performs, in the usual course of business, a distributor's or wholesaler's function, and has performed such functions for at least one year prior to filing application for said license. Such license shall be issued by the attorney general on applications stating, on a form prescribed by him, the name and address of the applicant, the address and place of business at which it is proposed to engage in such business, the type of business, and such other information as may be required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license shall be accompanied by a fee of ~~fifteen~~ twenty-five dollars and a surety bond to be approved by the attorney general in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license shall be accompanied by a fee of ~~ten~~ fifteen dollars. Stamps or insignia provided for in this chapter shall be sold to and affixed by licensed distributors only. Licensed dealers may sell or buy or have in their possession only cigarettes upon which such stamps or insignia have been previously affixed. A distributor's license does not authorize the holder thereof to make sales at retail. Each license issued shall be prominently displayed on the premises covered by the license.

SECTION 6. AMENDMENT. Subsection 1 of section 62.1-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, ~~or~~ dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts

weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any stun gun; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ U gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

SECTION 7. AMENDMENT. Section 62.1-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

62.1-04-03. License to carry a firearm or dangerous weapon concealed.

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
 - a. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.
 - b. The applicant is not a person specified in section 62.1-02-01.
 - c. The applicant has the written approval for the issuance of such a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has attended a testing procedure conducted pursuant to rules adopted by the attorney general. The testing procedure for approval of a concealed weapons license must include an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions, and a proficiency test consisting of a course of fire to be designated by the criminal justice training and statistics division of the attorney general's office. The purpose of the proficiency test is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal accuracy. A weapons instructor certified by the attorney general shall conduct the testing procedure.

The attorney general shall develop rules that ensure that this testing will be conducted periodically. The local agency conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The testing procedure is not required for a renewal of a concealed weapons license.

- d. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
2. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of its receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within thirty days of receipt from the forwarding agency.
3. The license fee for a concealed weapons license is ten dollars. The license fee must be paid before the license is issued by the chief of the bureau of criminal investigation.
4. The chief of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for three years. The license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the chief. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual shall notify the chief of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
- 4- 5. The chief of the bureau of criminal investigation may deny an application or revoke or cancel such a license after it has been granted for any material misstatement by an

applicant in an application for the license or any violation of this title.

- ~~5-~~ 6. The applicant may appeal a denial or revocation of this license to the district court of the applicant's county of residence.
- ~~6-~~ 7. The attorney general may adopt rules to carry out this title.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 533

SENATE BILL NO. 2325
(Todd, Nething, Langley)

NURSING HOME ADMINISTRATORS

AN ACT to amend and reenact sections 43-34-02 and 43-34-05 of the North Dakota Century Code, relating to the composition of the board of examiners for nursing home administrators, and the annual licensing fee for nursing home administrators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-34-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-34-02. Composition of the board. There is hereby created the state board of examiners for nursing home administrators which shall consist of nine members.

1. Two members of the board shall be the state health officer and the executive director of the department of human services.
2. One member of the board shall be a physician appointed to the board for a three-year term by the governor.
3. One member of the board shall be a hospital administrator appointed to the board for a three-year term by the governor.
4. ~~Three~~ Four members of the board shall be licensed nursing home administrators appointed to the board for three-year terms by the governor.
5. ~~One member of the board shall be a licensed nursing home administrator appointed to the board for a three-year term by the governor.~~
- 6- One member of the board shall be a nurse appointed to the board for a three-year term by the governor.

- 7- 6. Any vacancies occurring in the appointments made by the governor shall be filled by the governor.
- 8- 7. Appointive members may be removed by the governor for cause after due notice and hearing.

SECTION 2. AMENDMENT. Section 43-34-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-34-05. License fees. Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board, which fee ~~shall~~ may not exceed ~~fifty one~~ hundred dollars per annum. ~~Said~~ The license ~~shall expire~~ expires on the thirty-first day of December in the year of its issuance, and ~~shall be~~ is renewable annually, on a calendar-year basis, upon payment of the license fee. Any licensee, or applicant for license, may take a special examination for the purpose of being eligible for reciprocity with other states, upon the payment of an additional fee to be established by the board for that purpose.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 534

HOUSE BILL NO. 1092

(Committee on Natural Resources)

(At the request of the Board of Water Well Contractors)

MONITORING WELL CONTRACTORS

AN ACT to create and enact three new sections to chapter 43-35 of the North Dakota Century Code, relating to certified monitoring well contractors; and to amend and reenact sections 43-35-12, 43-35-13, 43-35-14, 43-35-21, and 43-35-22 of the North Dakota Century Code, relating to certification of monitoring well contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-35-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-12. Examination - When held - Notice. The board shall hold meetings at such times and such places as it shall designate for the purpose of administering an examination to those persons desiring to become certified as water well contractors ~~or~~ water well pump and pitless unit installers, or monitoring well contractors. The board shall give no less than ten days' written notice to each applicant of the time and place of such examination. The board shall develop separate examinations for the certification of water well contractors ~~and for the certification of~~ water well pump and pitless unit installers, and monitoring well contractors.

SECTION 2. AMENDMENT. Section 43-35-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-13. Certificate - How obtained - Fee - Bond. Any person desiring to take the examination to become a certified water well contractor shall first have completed a minimum of one year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a vocational school program of at least one year in water well construction and shall make application to the board. Any person desiring to take the examination to become a certified water well pump and pitless unit installer shall first have

completed a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed a vocational school program of at least one year in water well pump and pitless unit installation. Any person desiring to take the examination to become a certified monitoring well contractor shall first have completed a minimum of one year apprenticeship or experience in monitoring well construction under the direct supervision of a certified water well contractor or a certified monitoring well contractor or have completed a vocational school program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the board. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ten dollars. If upon examination the applicant is found to be qualified as a water well contractor or a water well pump and pitless unit installer, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

SECTION 3. AMENDMENT. Section 43-35-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-14. Bond required. Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond in the amount of two thousand dollars conditioned for the faithful performance of all water well, monitoring well, or pump and pitless unit installation contracts undertaken by ~~him~~ the applicant and the strict compliance with this chapter.

SECTION 4. AMENDMENT. Section 43-35-21 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-21. Certification to nonresidents - Reciprocity. To the extent ~~that other states which provide~~ providing for the certification of water well contractors ~~or,~~ monitoring well contractors, or water well pump and pitless unit installers provide for similar action, the ~~state board of water well contractors~~ may grant certification to water well contractors, monitoring well contractors, and water well pump and pitless unit installers certified by other states, upon payment by the applicant of the required fee and the furnishing of a bond as provided by section 43-35-14, after being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of such certificates in this state.

SECTION 5. AMENDMENT. Section 43-35-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-35-22. Contracting without certification - Penalty. Any person contracting to drill a water well or monitoring well or install a pump or pitless unit for another without being certified in accordance with this chapter, or otherwise violating this chapter, is guilty of an infraction.

SECTION 6. A new section to chapter 43-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certification of persons engaged in monitoring well contracting prior to certification requirement. Upon application and sworn affidavit and the payment of a registration fee of not more than fifty dollars, as set by the board, the board shall issue an appropriate certificate, without examination, to any person who has been engaged in the business of monitoring well contracting as an occupation for at least one year prior to the effective date of this Act, if the application is made prior to July 1, 1988. A person certified as a water well contractor under this chapter before the effective date of this Act, is deemed to be properly certified as a monitoring well contractor under this chapter subject to the renewal provisions of section 43-35-17 and is not required to apply for and receive a separate certificate under this section.

SECTION 7. A new section to chapter 43-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Firm engaged in monitoring well work to employ certified monitoring well contractor - Exception. No person may engage in the business of constructing a monitoring well in this state unless at all times a certified monitoring well contractor, who is responsible for the proper construction or alteration thereof, is in charge. This section does not prohibit any person from installing monitoring wells on that person's own premises for that person's own use.

SECTION 8. A new section to chapter 43-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Standards for installation of monitoring wells - Reports required. All monitoring wells constructed must comply with the rules adopted by the state department of health and the board. Each monitoring well contractor shall furnish all reports required by the rules of the state department of health or the board.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 535

SENATE BILL NO. 2459
(Senator Nalewaja)
(Representative Scherber)

ENVIRONMENTAL HEALTH PRACTITIONERS

AN ACT to amend and reenact subsection 1 of section 43-43-01, and sections 43-43-03, 43-43-04, 43-43-05, 43-43-06, and 43-43-07 of the North Dakota Century Code, relating to the advisory board of environmental health practitioners and the duties of the state health officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 43-43-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Advisory board" means the following or their appointed agents: ~~secretary of state~~ health officer as chairperson, the director of the state laboratories department, the ~~state health officer~~ commissioner of the North Dakota department of agriculture, and the president of the North Dakota environmental health association. The ~~secretary of state~~ health officer shall appoint ~~one agent of~~ a district or local health unit environmental health practitioner and one consumer.

SECTION 2. AMENDMENT. Section 43-43-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-43-03. Advisory board duties and compensation. The advisory board shall meet at the request of the ~~secretary of state~~ health officer to assist in implementation of duties as defined in section 43-43-04. The advisory board shall be reimbursed for any necessary expenses, but shall serve without further compensation except as may be authorized and fixed by the ~~secretary of state~~ health officer by rule.

SECTION 3. AMENDMENT. Section 43-43-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 43-43-01 was also amended by section 28 of Senate Bill No. 2278, chapter 263.

43-43-04. Powers and duties of secretary of state health officer. The secretary of state health officer shall adopt rules consistent with and necessary for the implementation and enforcement of this chapter, including rules concerning the:

1. Qualifications and requirements for licensure under this chapter.
2. Application for licensure and renewal of license.
3. Licensure.
4. Fees that may not exceed fifty dollars for licensure fees.
5. Scope of practice.
6. Ethical standards of conduct.
7. Continuing competency and education requirements.
8. Grievances and complaints.
9. Reimbursement of advisory board expenses.
10. Emergency exemptions as to requirements for licensure under this chapter.

SECTION 4. AMENDMENT. Section 43-43-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-43-05. Exception from requirements. The secretary of state health officer must license all persons actually engaged in the practice of environmental health in this state upon receipt of proof of a bona fide practice in this state; however, the applicant must file an application and present such proof prior to July 1, 1986, or become subject to licensure requirements of this chapter.

SECTION 5. AMENDMENT. Section 43-43-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-43-06. Environmental health practitioner licensure fee administration fund. There shall be maintained in the state treasury a special fund to be known as the environmental health practitioner licensure fee administrative fund. All money deposited or paid into this fund shall be continuously available to the secretary of state health officer for reimbursement to the advisory board, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of any money collected by the secretary of state health officer in accordance with section 43-43-04.

SECTION 6. AMENDMENT. Section 43-43-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-43-07. Denial, suspension, revocation of license. The secretary of state health officer may refuse to issue or renew a license or may suspend or revoke a license when the licensee or applicant for license has engaged in unprofessional conduct. Unprofessional conduct includes:

1. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
2. Engaging in unprofessional conduct, as defined by the rules adopted by the secretary of state health officer, or violating the code of ethics adopted by the secretary of state health officer.
3. Conviction of an offense, as defined by section 12.1-01-04, determined by the secretary of state health officer to have a direct bearing on the person's ability to serve the public in the capacity of a licensed environmental health practitioner; or the secretary of state health officer determines that such applicant or licensee, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Violation of any order or rule adopted by the secretary of state health officer.
5. Violation of this chapter.

The person may apply to the secretary of state health officer for reinstatement after one year from the date of revocation of a license. The secretary of state health officer may accept or reject an application for reinstatement, or may require conditions and an examination for reinstatement.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 536

SENATE BILL NO. 2277
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

ADDICTION COUNSELOR LICENSING

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to licensing of addiction counselors; to amend and reenact section 23-17.1-04, subsections 6, 7, and 9 of section 25-03.1-02, and subsection 3 of section 31-01-06.3 of the North Dakota Century Code, relating to the certification of addiction counselors, to the definitions of expert examiner, independent expert examiner, and mental health professional, and to the definition of counselor; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-17.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.1-04. Issuance, suspension, and revocation of ~~certificate or~~ license.

1. The department of human services is hereby authorized to ~~certify addiction counselors and to~~ issue licenses to operate addiction hospitals and other addiction treatment programs, for a period of ~~one year~~ two years, which, after examination or inspection, are found to comply with the provisions of this chapter, and any ~~regulations~~ rules adopted by the department.
2. The department may suspend or revoke a ~~certificate or~~ license issued hereunder on any of the following grounds:
 - a. Violation of any of the provisions of this chapter or the rules ~~and regulations~~ issued pursuant thereto.
 - b. Permitting, aiding or abetting the commission of any illegal act in such institution.

- c. Conduct or practices detrimental to the welfare or health of any patient of such institution.
3. Before any ~~certificate or~~ license issued hereunder is suspended or revoked, thirty days' written notice shall be given the holder thereof of the date set for the hearing of the complaint. The holder of such ~~certificate or~~ license shall be furnished with a copy of the complaint and be entitled to be represented by legal counsel at such hearing. Such notice shall be given by the department by registered or certified mail. If a ~~certificate or~~ license is revoked as herein provided, a new application for a ~~certificate or~~ license may be considered by the department when, and after, the conditions upon which revocation was based have been corrected and evidence of this fact has been satisfactorily furnished. A new ~~certificate or~~ license may then be granted after proper inspection has been made on all provisions of this chapter and ~~the any rules and regulations adopted~~ hereunder have been complied with.

SECTION 2. AMENDMENT. Subsections 6, 7, and 9 of section 25-03.1-02 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. "Expert examiner" means a licensed physician, psychiatrist, clinical psychologist, or ~~master licensed~~ addiction counselor appointed by the court to examine the respondent. An evaluation of a respondent's physical condition shall be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status shall be made only by a licensed psychiatrist or clinical psychologist, and an examination by a ~~master licensed~~ addiction counselor shall be limited to whether the respondent is an alcoholic or drug addict.
7. "Independent expert examiner" means a licensed physician, psychiatrist, clinical psychologist, or ~~master licensed~~ addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent meets the criteria of a person requiring treatment. An examination by a ~~master licensed~~ addiction counselor shall be limited to whether the respondent is an alcoholic or drug addict, and whether the respondent is a person requiring treatment.
9. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.

- c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
- d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c, or an expert examiner as defined by subsection 6.
- e. An A licensed addiction counselor certified by the department of human services.

SECTION 3. AMENDMENT. Subsection 3 of section 31-01-06.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Counselor" means an addiction counselor who has been certified by the professional standards and certification committee appointed by the executive director of the department of human services in accordance with qualifications established by that committee licensed under section 4 of this Act or who is reasonably believed by the client so to be, while engaged in the diagnosis or treatment of a physical, mental, or emotional condition, including alcohol or any addiction.

SECTION 4. A new chapter to title 43 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Addiction counseling" means the provision of counseling or assessment of persons regarding their use or abuse of alcohol or a controlled substance.
2. "Board" means the board of addiction counseling examiners.
3. "Internship" means a minimum of a twelve-month, full-time professional experience under the supervision of a clinical supervisor in a licensed addiction treatment facility.
4. "Practicum" means a minimum of nine months clinical training including inpatient and outpatient treatment work.

Board of addiction counseling examiners - Composition. The governor shall appoint a seven-member board of addiction counseling examiners. The members shall include:

1. Four members who are licensed addiction counselors actively engaged in the practice of addiction counseling.

2. Two members who are lay persons.
3. One member who is a director or coordinator of an addiction counselor training program.

Board member terms. The governor, prior to September 1, 1987, shall appoint two board members for a term of one year, two board members for a term of two years, and three board members for a term of three years. Appointments made thereafter must be for three-year terms, but no person may be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.

Board power, duties, and authority. The board shall administer and enforce the provisions of this chapter, evaluate the qualifications of applicants, and issue licenses under this chapter. The board shall also approve addiction counselor training programs. The board may:

1. Adopt rules under chapter 28-32, relating to licensure of addiction counselors, the establishment of ethical standards of practice for persons holding a license to practice addiction counseling in this state, the establishment of continuing education requirements, and the requirements for approved addiction counselor training programs.
2. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
3. Approve and administer examinations for licensing addiction counselors.
4. Collect a fee set by the board on the filing of each application for a license to practice addiction counseling.
5. Appoint or employ persons to assist the board in carrying out its duties under this chapter.

Board meetings.

1. The board shall meet on at least a quarterly basis. A majority of the members constitute a quorum.
2. Each board member shall serve without compensation but shall receive expenses as provided in section 54-06-09.

Licenses.

1. No person may represent to the public that the person is an addiction counselor or engage in the practice of addiction counseling in this state unless that person is a licensed addiction counselor. Nothing in this chapter may be construed to prevent any person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public, by title, that the person is engaging in addiction counseling. Trainees and interns in programs approved by the board to provide addiction counselor training may engage in activities required by the training program without obtaining a license to practice addiction counseling.
2. The board shall issue an initial one-year license as an addiction counselor to an applicant who:
 - a. Has successfully completed course work, approved by the board, at an accredited college or university;
 - b. Has successfully completed an examination approved by the board for this purpose; and
 - c. Has successfully completed an addiction counselor training program, approved by the board, a practicum, and an internship.
3. Upon application prior to January 1, 1988, the board shall issue an initial one-year license as an addiction counselor to any person holding a department of human services certification as an addiction counselor or a master addiction counselor.
4. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another state, territory of the United States, or province of Canada that imposes substantially the same requirements that are imposed under this chapter.
5. An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

Renewal of license - Revocation of license.

1. The board shall annually renew the initial license of a person licensed under this chapter upon application and showing that:
 - a. The holder of the license is in compliance with the provisions of this chapter and the rules adopted under

this chapter, except that the requirements of subsection 2 of the preceding section do not apply to those addiction counselors licensed pursuant to subsection 3 of the preceding section.

- b. The holder of the license has successfully completed the continuing education requirements set by the board.
2. After notice to the license holder and, if demanded within thirty days, after a hearing before the board under chapter 28-32, the board may revoke the license of an addiction counselor upon a showing that the holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:
 - a. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.
 - b. Violating rules set by the board.
 - c. Violating a provision of this chapter.
3. One year from the date of the revocation, the license holder may make application for initial licensure.

Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

Approved April 4, 1987
Filed April 6, 1987

OFFICES AND OFFICERS

CHAPTER 537

HOUSE BILL NO. 1519
(Hamerlik)

STATE OFFICIAL BONDS

AN ACT to repeal section 44-01-06 of the North Dakota Century Code, relating to the requirement for all elected and appointed state officials to be bonded.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 44-01-06 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 538

SENATE BILL NO. 2399
(Senators Mathern, Ingstad)
(Representative Scherber)

PUBLIC EMPLOYEE MEDICAL RECORD CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the confidentiality of public employee medical and employee assistance records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Public employee medical and employee assistance records - Confidentiality.
Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and may not be released without the written consent of the employee. As used in this section, the term "public employee" includes any person employed by the state or any of its political subdivisions.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 539

SENATE BILL NO. 2534
(David, Dotzenrod)

PUBLIC MEETING NOTICE

AN ACT to amend and reenact section 44-04-20 of the North Dakota Century Code, relating to notices of public meetings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-04-20. Notice of public meetings required - Exceptions - Schedule set by statute, ordinance, or resolution. Unless otherwise provided by law, public notice must be given in advance of all meetings governed by section 44-04-19, including conference call meetings. This notice shall contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure or an addition to the agenda at a meeting, shall not affect the validity of the meeting or the actions taken thereat. In cases where the public body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, shall be filed annually in January, for state-level bodies, with the main office of the public body and, if requested to do so by an interested party, ~~with the secretary of state for state-level bodies,~~ the city auditor for city-level bodies, and the county auditor for all other public bodies. This schedule shall be furnished to anyone who requests the information. In addition, every public body shall post public notice of each of its meetings at its principal office, if such exists, and at the location of the meeting. The public body's presiding officer shall have the responsibility of assuring that such public notice is given at the same time as such public body's members are notified, and that this notice is available to anyone requesting such information. In the event of emergency or special meetings of a public body, the person calling such a meeting shall notify representatives of the news media, if any, located where the meeting is to be held and which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such public body's members are notified. Where reasonable and practicable, a public body should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. The attorney general shall prepare general guidelines to assist public bodies in following the provisions of this section. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public body, notices required by this section do not have to be published. The provisions of section 12.1-11-06 shall not apply to this section.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 540

HOUSE BILL NO. 1432
(Representative Wentz)
(Senator Stenehjem)

ADMINISTRATION OF OATHS

AN ACT to amend and reenact section 44-05-01 of the North Dakota Century Code, relating to officers authorized to administer oaths.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-05-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-05-01. Officers authorized to administer oaths. The following officers are authorized to administer oaths:

1. Each ~~judge justice~~ of the supreme court, each judge of the district court, the clerk of the supreme court, and ~~his~~ the clerk's deputy.
2. Judge of the county court, clerk of the district court, clerk of the county court, county auditor, register of deeds, and the deputy of each such officer within ~~his~~ that officer's county.
3. Each county commissioner and public administrator within ~~his~~ that officer's county.
4. Notary public anywhere in the state, upon complying with ~~the provisions of~~ section 44-06-04.
5. Each city auditor, municipal judge, and township clerk, within ~~his~~ that officer's own city or township.
6. Each sheriff and ~~his~~ the deputy sheriff within ~~his~~ the sheriff's county in the cases prescribed by law.
7. Other officers in the cases prescribed by law or by rule of the supreme court.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 541

SENATE BILL NO. 2113
(Committee on State and Federal Government)
(At the request of the Secretary of State)

NOTARY PUBLIC BONDS AND RECORDS

AN ACT to amend and reenact sections 44-06-03, 44-06-05, and 44-06-09 of the North Dakota Century Code, relating to notary public surety bonds and records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-03. Oath and bond of notary public - Approval of bond. Each notary public, before entering upon the duties of the office, shall take the oath prescribed for civil officers and give to the state a bond in the penal sum of seven thousand five hundred dollars conditioned for the faithful discharge of the duties of the office. Such bond may be furnished by a surety or bonding company authorized to do business in this state or by one or more sureties, and shall be is subject to approval as follows: by the secretary of state.

- 1- ~~If it is a surety bond, it shall be subject to approval by the secretary of state, and such approval shall be without charge.~~
- 2- ~~If it is a personal bond, it shall be subject to approval by the clerk of the district court of the county of which the notary public is a resident, or of the county to which such county is attached for judicial purposes. The clerk of district court shall charge and collect a fee as prescribed in subsection 4 of section 11-17-04 for such approval.~~

SECTION 2. AMENDMENT. Section 44-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-06-05. Vacancy - Disposition of records. Whenever the office of any notary public shall become vacant, the record of such notary together with all papers relating to the office shall be deposited in the office of the clerk of the district court of the county in

~~which such notary public resides~~ secretary of state. Any notary public who, on resignation or removal from office, or any executor or administrator of the estate of any deceased notary public who neglects to deposit such records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces, or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty dollars nor more than five hundred dollars, and he also shall be liable in a civil action for damages to any party injured.

SECTION 3. AMENDMENT. Section 44-06-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

~~44-06-09. Clerks of district courts~~ Secretary of state - Preservation of records. ~~The clerk of the district court~~ secretary of state shall receive and keep safely all the records and papers directed by this chapter to be deposited in his office and shall furnish certified copies thereof when required. Such copies shall have the same force and effect as if the same were certified by the notary public by whom the record was made.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 542

HOUSE BILL NO. 1182
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

PUBLIC EMPLOYEE TRAVEL EXPENSES

AN ACT to amend and reenact section 44-08-04 of the North Dakota Century Code, relating to travel expenses for state and public employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 44-08-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-04. Expense account - Amount allowed - Verification. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged within this state in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it shall be paid as an allowance at the following rates for each quarter of any twenty-four-hour period:

1. First quarter shall be from six a.m. to twelve noon and the sum shall not exceed three dollars and fifty cents in state, or six dollars out of state. No reimbursement may be made if travel began after seven a.m.

* NOTE: Section 44-08-04 was also amended by section 1 of House Bill No. 1380, chapter 543.

2. Second quarter shall be from twelve noon to six p.m. and the sum shall not exceed five dollars in state, or nine dollars out of state.
3. Third quarter shall be from six p.m. to twelve midnight and the sum shall not exceed eight dollars and fifty cents in state, or fifteen dollars out of state.
4. Fourth quarter shall be from twelve midnight to six a.m. and the sum shall be the actual lodging expenses not to exceed thirty-five dollars.
5. Provided, however, that the preceding four subsections shall not be applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt or the certificate of a member of the legislative assembly shall be required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive ~~thirty dollars a day for meals and in addition thereto~~ actual lodging expenses. Verification by receipt for such out-of-state travel expense shall be required only for lodging expense claimed.

Those persons engaged in foreign travel, shall receive reimbursement for meals at a rate not to exceed two times the regular out-of-state meal allowance with the exception of Canadian travel, which will be reimbursed at regular out-of-state rates. Verification by receipt for such foreign travel expense shall be required only for the lodging expense claimed.

The head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under his authority. Verification of any other type of expense not prescribed by this section shall be as prescribed by the office of the budget except no receipt shall be required for taxi or cab fares up to and including the sum of ten dollars. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 543

HOUSE BILL NO. 1380
(Representatives Mertens, Strinden)
(Senators Olson, Heigaard)

LEGISLATIVE EXPENSE VERIFICATION

AN ACT to amend and reenact section 44-08-04 of the North Dakota Century Code, relating to verification of expense accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 44-08-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-04. Expense account - Amount allowed - Verification. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged within this state in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it shall be paid as an allowance at the following rates for each quarter of any twenty-four-hour period:

1. First quarter shall be from six a.m. to twelve noon and the sum shall not exceed three dollars and fifty cents. No reimbursement may be made if travel began after seven a.m.
2. Second quarter shall be from twelve noon to six p.m. and the sum shall not exceed five dollars.

* NOTE: Section 44-08-04 was also amended by section 1 of House Bill No. 1182, chapter 542.

3. Third quarter shall be from six p.m. to twelve midnight and the sum shall not exceed eight dollars and fifty cents.
4. Fourth quarter shall be from twelve midnight to six a.m. and the sum shall be the actual lodging expenses not to exceed thirty-five dollars.
5. Provided, however, that the preceding four subsections shall not be applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.

Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt or the certificate of a member of the legislative assembly shall be required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive thirty dollars a day for meals and in addition thereto actual lodging expenses. Verification by receipt for such out-of-state travel expense shall be required only for lodging expense claimed.

Those persons engaged in foreign travel shall receive reimbursement for meals at a rate not to exceed two times the regular out-of-state meal allowance. Verification by receipt for such foreign travel expense shall be required only for the lodging expense claimed.

The head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under his authority. Verification of any other type of expense not prescribed by this section shall be as prescribed by the office of the budget except no receipt shall be required for taxi or cab fares up to and including the sum of ten dollars. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 544

HOUSE BILL NO. 1097
(Committee on State and Federal Government)
(At the request of the Secretary of State)

COURT SEALS

AN ACT to amend and reenact section 44-08-06 of the North Dakota Century Code, relating to dimensions of a seal of a court or officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-06. Dimensions of seal of court or officer. Upon every seal of a court or officer of this state required or authorized to have a seal, there shall be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, shall be embossed, surrounded by a border and either one and five-eighths of an inch [41.28 millimeters] in diameter or of a rectangular design, seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 545

SENATE BILL NO. 2338
(Senator Heinrich)
(Representative L. Hanson)

SCHOOL BOARD MEMBER REMOVAL

AN ACT to amend and reenact sections 44-10-02, 44-10-16, 44-11-01, and 44-11-02 of the North Dakota Century Code, relating to the removal of school board members from office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-10-02. **Accusation by grand jury - Causes for removal.** An accusation in writing against any district, county, township, city, or municipal officer, school board member, or any state officer not liable to impeachment, except a representative in Congress and a member of the legislative assembly, for misconduct, malfeasance, crime, or misdemeanor in office, or for habitual drunkenness or gross incompetency, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed. When ~~such~~ the proceedings are against a state officer not liable to impeachment, the accusation may be presented by the grand jury of the county in which ~~such~~ the officer resides or in which he has his office for the transaction of his official business.

SECTION 2. AMENDMENT. Section 44-10-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-10-16. **Other accusations - Delivery by judge to state's attorney.** When an accusation in writing and verified by the oath of any person is presented to the district court, alleging that an officer or school board member within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered or to be rendered in his office, or has refused or neglected to perform the official duties pertaining to his office, or has rendered himself incompetent to perform his said duties by reason of habitual drunkenness or other cause, the judge of the court to whom it is delivered must ~~cause such~~ transmit the accusation ~~forthwith to be transmitted~~ to the state's attorney of the county, or in case it

is against the state's attorney of the county, the accusation must be delivered as provided by section 44-10-15.

SECTION 3. AMENDMENT. Section 44-11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-01. What officers removable by governor - Grounds. The governor may remove from office any county commissioner, clerk of the district court, sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to him the governor by competent evidence and after a hearing as provided in this chapter, that such the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 4. AMENDMENT. Section 44-11-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-11-02. Charges - How made - By whom prosecuted.

1. The complaint or charges against any such official authorized to be removed by the governor shall must be entitled in the name of the state of North Dakota this state and shall must be filed with the governor.
2. ~~It~~ The complaint or charges against any official, other than a school board member, may be made upon the relation of fifty qualified electors of the county in which the person charged is an officer, or upon the relation of ten percent of the qualified electors voting at the preceding general election for the office of governor in that political subdivision or district in which the person charged is an officer, whichever is least, or by the state's attorney of such county.
3. ~~Such~~ The complaint or charges against a school board member must be made upon the relation of a petition containing the signatures of qualified electors of the school district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census shall be required. However, not fewer than twenty-five signatures shall be required unless the district has fewer than twenty-five qualified electors, in which case the petition shall be signed by not less than twenty-five percent of the

qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district shall be determined by the county superintendent for such county in which such school is located.

4. The complaint and charges ~~shall~~ must be filed by the attorney general when directed to do so by the governor.
5. a. When the officer sought to be removed is other than the state's attorney, the state's attorney or other competent attorney, upon request of the governor, shall appear and prosecute.
 - b. When the proceedings are brought to remove the state's attorney, the governor shall request the attorney general or other competent attorney to appear on behalf of the state and prosecute such proceedings.

Approved March 26, 1987

Filed March 30, 1987

PARTNERSHIPS

CHAPTER 546

HOUSE BILL NO. 1505
(C. Nelson, Schneider)

PARTNERSHIP NAME CERTIFICATES

AN ACT to amend and reenact section 45-11-02 of the North Dakota Century Code, relating to fictitious partnership name certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-11-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-02. **How certificate executed - Content.** A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by one or more of the partners and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. The certificate must state the fictitious name, the names in full of all the members of the partnership ~~and~~, their places of residence, and the address of the principal place of business.

Approved March 20, 1987
Filed March 23, 1987

PRINTING LAWS

CHAPTER 547

SENATE BILL NO. 2276
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

STATE PRINTING AND BINDING

AN ACT to amend and reenact sections 46-01-02, 46-02-01, 46-02-04, 46-02-05, 46-02-06, 46-02-07, 46-02-09, 46-02-10, 46-02-12, and 46-02-14 of the North Dakota Century Code, relating to printing and binding duties of the office of management and budget; and to repeal sections 46-02-03, 46-02-11, 46-02-13, and 46-02-18 of the North Dakota Century Code, relating to printing and binding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-01-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-01-02. Printing duties of office of management and budget. The office of management and budget shall:

1. Draw up and examine all advertising Bid all printing requisitions as requested and let all contracts.
2. Examine all work and supplies to determine if they conform it conforms to the contract.
3. Examine all accounts for state printing let to contract to determine if the charges are correct.
4. Determine the price of any legal notice or publication when requested by any state agency or department, or by any political subdivision. Its decision on the proper fee for such publication shall be binding and final, subject to review by the courts.
- 5- Prepare a legal publications handbook containing samples of the legal advertising, legal notices, proceedings, and other such items, including sample voting machine and paper ballots, required of or published by any state governmental entity or political subdivision other than

the judicial or legislative branches of government. The handbook shall contain guidelines for form, style, and content. The office shall prepare the handbook with the advice of a committee composed of: the director of the office; the director of the office's purchasing and printing division; the secretary of state; the president of the printing industries of North Dakota; the president of the North Dakota newspaper association; and the president of the North Dakota county auditors association. The office shall distribute the handbook to all concerned parties. The office will determine if it shall approve payments for any state agency or department, other than the judicial or legislative branches of government; advertising or publishing material not conforming with the handbook.

SECTION 2. AMENDMENT. Section 46-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-01. Printing and binding - Duties of department of accounts and purchases the office of management and budget. ~~The department of accounts and purchases office of management and budget shall-~~

- 1- ~~Have~~ have charge of all the printing and binding required to be done for the several departments of the state government except as otherwise provided by section 46-02-09.
- 2- Receive the proper orders for the same and have the same properly executed according to law.
- 3- Keep a record of all work ordered from the several contractors according to law and of all printing and binding for departments of the state government.
- 4- Examine and supervise the work of printing in progress and see that it is executed with due economy to the state.
- 5- Make or authorize to be made the necessary indexes for the volumes of all the executive documents and reports.
- 6- Examine all accounts for printing and binding that may be presented.
- 7- Adjust all accounts for printing and binding that are presented according to the terms of the contract and in accordance with law and such rulings as may be determined by the department.

No printing required by any state officer as provided in this chapter shall be paid for unless the same first shall have been it was authorized by the legislative assembly or by the department of accounts and purchases office of management and budget for three hundred dollars and over.

SECTION 3. AMENDMENT. Section 46-02-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-04. Classes of printing - Contracts. The printing of the state is hereby divided into classes as follows:

1. The printing of legislative documents for the use of the legislative assembly shall constitute the first class. For the purposes of this subsection, the words "legislative documents" shall mean bills and resolutions. However, certain bills and resolutions may be excepted from this class, as directed by officers of the legislative assembly or as provided for in the rules of the senate and the house of representatives.
2. The printing and binding of the journals of the senate and the house of representatives shall constitute the second class.
3. The printing and binding of the reports and other documents required by state law to be prepared and submitted to the governor and the office of management and budget, and which make up the governmental biennial reports as prescribed by sections 54-06-03 and 54-06-04, shall constitute the third class. This class does not include the official budget report.
4. The printing and binding of the volumes of laws, with such legislative resolutions as shall be included in said volumes, shall constitute the fourth class.
5. Repealed by S.L. 1979, ch. 187, § 108.
6. All printing not included in the foregoing classes shall constitute the sixth class.

Separate contracts for each of classes 3 and 4 shall be let by the office of management and budget under competitive bidding in accordance with the provisions of this title ~~and at a cost and price not in excess of the cost and price as provided for in the Franklin Printing Catalogue.~~ Contracts for classes 1 and 2 shall be let by competitive bidding by the office of management and budget in accordance with the rules of the senate and the house of representatives of the state of North Dakota of the previous legislative session; ~~but at a cost and price not in excess of the cost and price as provided for in the Franklin Printing Catalogue.~~

SECTION 4. AMENDMENT. Section 46-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-05. Proposals for printing - Classifications 1, 2, 3 and 4. The department of accounts and purchases office of management and budget, at least ~~six~~ two months immediately preceding each regular

session of the legislative assembly, shall advertise for four weeks successively in two daily papers in the state, one of which shall be published at the seat of government, inviting invite sealed proposals bids for doing all printing and binding constituting each of classifications 1, 2, 3 and 4, required by the legislative assembly and by the several state departments for the two succeeding years commencing with the first day of December next following the date of the contract. Such bids shall specify the price and cost for which the said work will be performed and the stock furnished.

SECTION 5. AMENDMENT. Section 46-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-06. Opening of bids - Awards. The department of accounts and purchases office of management and budget, within two fifteen days after the date for receiving proposals as aforesaid, and not later than the first Tuesday after the first Monday in August, shall proceed to open in public all such proposals received by it, and to shall award the contract for each class of printing to the lowest bidder therefor, subject to the provisions of this title. If two or more persons bid the same and the lowest price for any class of printing, the department of accounts and purchases office of management and budget shall award the contract to such one or more of them as in its opinion will best subserve the interests of the state.

SECTION 6. AMENDMENT. Section 46-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-07. Proposals - How made - Bond required. Each proposal for each class of state printing let under competitive bids shall be in writing, sealed and addressed to the director of the department of accounts and purchases, shall be accompanied by a bond executed in due form by the bidder, approved by the attorney general and satisfactory to the director of accounts and purchases, in the penal sum of four thousand dollars conditioned for the faithful performance according to law of the class of the state printing if awarded to him and for the payment, as liquidated damages, by such bidder to the state, of any excess of cost over the bid of such bidder which the state may be obligated to pay for such work by reason of the failure of such bidder to complete his contract. No bid unaccompanied by such bond shall be considered office of management and budget. The successful bidder will be required to submit a performance bond, as specified in the bid. The department of accounts and purchases office of management and budget may reject any bid made by anyone other than a regularly established and thoroughly competent printer and also may reject any or all bids if in its judgment the best interests of the state would be subserved thereby.

SECTION 7. AMENDMENT. Section 46-02-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-09. Sixth-class items - When bids or quotations required - Costs determined. All work on sixth-class items amounting to three hundred dollars or over as determined by the Franklin Printing Catalogue, not done by the central duplicating service of the office of management and budget or by departments, institutions, or state offices with authorized duplicating or printing centers, must be let by competitive bidding or by the solicitation of at least two quotations by the office of management and budget, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than three hundred dollars may be given by the department head to the printer of his choice accompanied by a purchase order of which one copy must be sent to the office of management and budget. All departments, institutions, or state offices shall submit requisitions for all printing to the office of management and budget. Departments, institutions, or state offices authorized to do their own bidding must attach the bids or quotations to their requisition for printing. Where practical, all departments, institutions, or state offices authorized to do their own bidding shall take advantage of annual contracts established by the office of management and budget. The office of management and budget shall determine and fix the reasonable maximum cost or price for such printing work. The maximum cost of the work shall not exceed Franklin Printing Catalogue prices.

SECTION 8. AMENDMENT. Section 46-02-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-02-10. Printing and binding done without unnecessary delay - Time within which laws and public documents must be delivered - How extension granted.

1. Each contractor under the provisions of this chapter, promptly and without unnecessary delay, shall execute all orders issued to him by the legislative assembly, either branch thereof, or by the legislative council, or by the office of management and budget on behalf of the executive officers of the state.
2. Volumes of public documents shall be delivered to the secretary of state within seventy days after receipt of final copy, exclusive of index copy, and the journals of the two houses of the legislative assembly shall be delivered in accordance with the deadline provided in the contract for printing. The session laws shall be completed and delivered to the secretary of state within ninety days after the date of adjournment of the legislative assembly as recorded in the journals of that body in accordance with the deadline provided in the contract for printing.
3. The legislative council, with the assistance of the secretary of state, shall, with reasonable expedition,

furnish the printing contractor with true and correct copies of the laws and resolutions to be contained in the session laws and copy for the index to the session laws.

4. The office of management and budget, with the concurrence of the legislative council in the case of a contractor for the printing of the session laws or journals, may, for good cause shown, extend the time for the execution of any printing contract ~~for a period not to exceed twenty consecutive calendar days.~~

SECTION 9. AMENDMENT. Section 46-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

~~46-02-12. Department of accounts and purchases The office of management and budget may reject inferior printing and work. The department of accounts and purchases office of management and budget may reject any and all printing that is not done in a workmanlike manner or with good material and with ordinary promptness. It may require contractors to present specimen pages of type they propose to use, and may reject the same in its discretion and require new material. Its ruling and determination shall be final and conclusive on the contractor. Only good, clean, and satisfactory work shall be accepted, and it must be done within a reasonable time. If by reason of the cancellation of any contract, as is provided in section 46-02-11, the cost of having any such work done is greater than the original contract price, the excess shall be charged to and collected from the original contractor or shall be made payable by and collected from the bondsmen of such original contractor. The action of the department office in this matter shall be final and conclusive upon such contractor and his sureties.~~

SECTION 10. AMENDMENT. Section 46-02-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

~~46-02-14. Copies of documents to accompany bills for printing - Contents of bill. Every person doing public printing pursuant to the provisions of this chapter shall file and preserve one copy of each document or other matter printed by him for the state and for orders of three hundred dollars or over which he shall deliver to the office of management and budget at the time the completed work is delivered, together with a memorandum bill of the same.~~

SECTION 11. REPEAL. Sections 46-02-03, 46-02-13, and 46-02-18 of the North Dakota Century Code, and section 46-02-11 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 548

SENATE BILL NO. 2253
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

STATE PRINTING

AN ACT to create and enact a new section to chapter 46-02 of the North Dakota Century Code, relating to in-plant printing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 46-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

In-plant print shops. Central duplicating services of the office of management and budget or by departments, institutions, state offices, and printing services under the jurisdiction of the board of higher education, with the exception of the state school of science, the university of North Dakota, and the state university of North Dakota-Valley City, may not provide the following services: printing or duplicating of all coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, process color, and print or duplicate paper larger than eleven inches [27.94 centimeters] by seventeen inches [43.18 centimeters].

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 549

HOUSE BILL NO. 1057

(Legislative Council)

(Interim Legislative Procedure and Arrangements Committee)

FILING LEGISLATIVE BILLS

AN ACT to create and enact a new section to chapter 54-07 and a new subsection to section 54-09-02 of the North Dakota Century Code, relating to the duties of the governor and the secretary of state to file and record the filing of bills passed by the legislative assembly; to amend and reenact section 46-03-15 of the North Dakota Century Code, relating to the publication of the laws; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-03-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-03-15. Authentication of session laws, memorials, and resolutions. All laws printed or published by authority of this state shall contained in the session laws must be printed or published without the requirement of any certificate or additions to the same, except with the word "approved" and the date of such approval and with the word "filed" and the date of filing. In each authenticated volume of the session laws published there shall be a general certificate made by the secretary of state and the legislative council to the effect that all laws, memorials, and resolutions contained therein have been compared with are correct copies of the originals thereof in the office of the secretary of state and that they are correct copies.

SECTION 2. A new section to chapter 54-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Governor to file bills with secretary of state. The governor shall cause each bill passed by the legislative assembly and not vetoed by the governor to be filed with the secretary of state within three days, Sundays excepted, after the bill has been presented to the governor unless the legislative assembly by its adjournment prevents its return in which case the governor shall cause the bill to be filed within fifteen days after the adjournment.

SECTION 3. A new subsection to section 54-09-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Indicate on each bill passed by the legislative assembly the date of filing in the secretary of state's office.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved February 17, 1987
Filed March 30, 1987

CHAPTER 550

SENATE BILL NO. 2122
 (Committee on State and Federal Government)
 (At the request of the Office of Management and Budget)

LEGAL NOTICE PUBLICATION FEES

AN ACT to amend and reenact section 46-05-03 of the North Dakota Century Code, relating to fees for publication of legal notices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-05-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-05-03. Legal notices - Fees. The fees to be paid to newspapers for the publication of any legal notice and legal publication of whatever kind or character required by law to be published shall be twenty-six cents per counted line of compugraphic six-point news type number nine for the first insertion, and sixteen cents per counted line for each subsequent insertion, based on a column width of eleven picas. Newspapers using a different column width or typeface shall submit a copy of their typeface and column to the office of management and budget which will determine the legal rate to be charged by that newspaper to create parity with the base rate. Regardless of column width or size of type, all lines containing one or more columns of figures shall be thirty-nine cents per counted line for first publication and sixteen cents per counted line for subsequent insertions. However, in no instance shall the line be less than nine picas nor the type size smaller than five-point nor larger than nine-point. Published ballots or publications which by their nature require open display shall be computed at thirty-nine cents per counted line for first publication and sixteen cents per counted line for subsequent insertions, based on the following ballot and open display line count chart:

Column Widths	Lines per Column Inch
9	14-6
9 1/2	13-9
10	13-2
10 1/2	12-6

11	12
11 1/2	11-5
12	11
12 1/2	10-6
13	10-2
13 1/2	9-8
14	9-4
14 1/2	9-1
15	8-8

To effect uniformity, the office of management and budget may compute a standard price on those legal notices which are widely published such as ballots, insurance statements, and official proclamations. In computing standard pricing, the office shall utilize the standard six-point type, eleven picas column rate. All newspapers must use the rates, type size, and column width as shown on its legal notice rate certification issued by the state printing agent of the office of management and budget. Certifications shall be issued within fifteen days after samples are submitted.

The office of management and budget shall annually review and adjust the above rates to reflect changes in economic conditions within the newspaper industry and the general economy, and those adjustments shall become effective on each July first following the review. These annual changes may be percentage increases or decreases in the base rates, and they may incorporate revisions in the base rate structure. Whenever the office of management and budget considers an adjustment in the legal publication rates contained herein, it shall consult with representatives of the daily and weekly newspaper industry of the state and with representatives of state and local units of government.

Approved March 26, 1987
 Filed March 30, 1987

CHAPTER 551

SENATE BILL NO. 2518
(Senators Freborg, Bakewell, Tallackson)
(Representatives Kretschmar, Knell)

OFFICIAL COUNTY NEWSPAPER BONDS

AN ACT to repeal section 46-06-07 of the North Dakota Century Code, relating to the bond required for the official county newspaper.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 46-06-07 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

PROPERTY

CHAPTER 552

HOUSE BILL NO. 1468
(Nowatzki, G. Berg)

FARM LEASE CROP OWNERSHIP

AN ACT to amend and reenact sections 47-16-03 and 47-16-04 of the North Dakota Century Code, relating to agricultural lease title reservations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-03. Filing farm lease containing reservation of title to crop - Waiver of rights on failure to file. When a lease of a farm contains a provision reserving title in the lessor to all or any part of the crops in the lessor excess of the rental share of the lessor until the stated conditions of the lease have been complied with by the lessee and a division of the crop is made, such lease must be filed in the office of the register of deeds in the county in which the land described therein is located prior to July first in the year in which the crops are raised to render such reservation of title effective as to subsequent purchasers or encumbrancers of the lessee any part of the grain raised upon such over and above the lessor's rental share produced upon the land. The failure to file such lease or contract in accordance with the requirements of this section shall constitute constitutes a waiver by the lessor of all rights reserved by him that person over and above that person's rental share in such crops as against any subsequent purchaser or encumbrancer of the lessee.

SECTION 2. AMENDMENT. Section 47-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-04. Products during lease belong to lessee. The In the absence of any agreement to the contrary between the lessor and the lessee, the products received from real property during the term of a lease belong to the lessee.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 553

SENATE BILL NO. 2071
(Legislative Council)
(Interim Oil and Gas Committee)

INSPECTION OF OIL AND GAS RECORDS

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to inspection of oil and gas production and royalty payment records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspection of production and royalty payment records. A royalty owner, a royalty owner's assignee, or a designated representative, upon written notice, is entitled to inspect and copy the oil and gas production and royalty payment records for the lease of the person obligated to pay royalties under the lease or division order. The person obligated to pay royalties under the lease shall make that person's oil and gas royalty payment and production records available for inspection and copying at that person's usual and customary place of business within the United States. A royalty owner may bring an action to compel the person obligated to pay royalties to allow inspection and copying of oil and gas production royalty payment records. In order for the royalty owner to prevail in such an action, the royalty owner must establish that:

1. The royalty owner or his assignee complied with notice requirements of this section;
2. The notice specified the lease involved, the time period under review and the records requested;
3. The royalty owner notified the person obligated to pay royalties at the address printed on the information statement as prescribed by rules adopted by the industrial commission pursuant to section 38-08-06.3; and
4. The person obligated to pay royalties denied inspection of the records or failed to respond within thirty days of service of notice.

The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the royalty owner or the royalty owner's assignee is successful in any proceeding brought pursuant to this section, the district court shall allow the royalty owner or the royalty owner's assignee to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the royalty owner or the royalty owner's assignee or a designated representative in inspecting and copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 554

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Oil and Gas Committee)

DIVISION ORDERS

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to the definition and operation of oil and gas division orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

Division orders - Definition, function, and operation. A division order is an instrument executed by the operator, the royalty owners, and any other person having an interest in the production directing the purchaser of oil or gas to pay for the products taken in the proportions set out in the instrument. Royalty payments may not be withheld because an interest owner has not executed a division order. A division order may not alter or amend the terms of the oil and gas lease. A division order that varies the terms of the oil and gas lease is invalid to the extent of the variance and the terms of the oil and gas lease take precedence.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 555

SENATE BILL NO. 2450
(Senators Kelsh, D. Meyer, Krauter)
(Representatives Shockman, Brokaw, Marks)

HOMESTEAD EXEMPTION WAIVER

AN ACT to create and enact a new section to chapter 47-18 of the North Dakota Century Code, relating to notice of waiver of homestead exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Waiver of homestead exemption - Notice required. All mortgages on homesteads executed after June 30, 1987, which are not purchase money agreements must contain the following statement printed in a conspicuous manner, and must be signed and dated by the person waiving the exemption at the time the contract is executed:

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale, and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 556

SENATE BILL NO. 2495
(Olson)

NOTARIES PUBLIC

AN ACT to amend and reenact section 47-19-14.1 of the North Dakota Century Code, relating to recognition of notarial acts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 47-19-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-19-14.1. Recognition of notarial acts performed outside this state. For the purposes of this section and sections 47-19-14.2 and 47-19-14.7, "notarial acts" mean acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

1. A notary public authorized by any jurisdiction to perform notarial acts in the place in which the act is performed.
2. A justice, judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed.
3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed.
4. A commissioned officer or noncommissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts, if the notarial act is performed for one of the following, or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States.
5. Any other person authorized to perform notarial acts in the place in which the act is performed.

Approved March 13, 1987
Filed March 16, 1987

CHAPTER 557

SENATE BILL NO. 2104
(Committee on Judiciary)
(At the request of the Supreme Court)

DOCUMENT CERTIFICATION BY COUNTY JUDGE

AN ACT to repeal section 47-19-37 of the North Dakota Century Code, relating to the requirement that the clerk of district court certify to the signature of a county judge when a document that has been notarized or certified by the county judge is used in a county other than the county in which the judge resides.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. REPEAL. Section 47-19-37 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 558

SENATE BILL NO. 2214
(Committee on Finance and Taxation)
(At the request of the State Treasurer)

**PERFORMING RIGHTS LICENSING AND
COPYRIGHT**

AN ACT to amend and reenact section 47-21-08 of the North Dakota Century Code, relating to the tax levied on selling and licensing performing rights or music or dramatico-musical compositions; and to repeal sections 47-21-01, 47-21-02, 47-21-03, 47-21-04, 47-21-05, 47-21-06, 47-21-07, 47-21-09, and 47-21-10 of the North Dakota Century Code, relating to copyrights for musical and dramatico-musical compositions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-21-08. Tax levied on selling and licensing performing rights of music or dramatico-musical compositions - Payable to state tax commissioner. A tax shall be levied and collected for the act or privilege of selling, licensing, or otherwise disposing of performing rights in music or dramatico-musical compositions in this state, in an amount equal to five percent of the gross receipts of all such sales, licenses, or other disposition of performing rights in this state, payable to the state tax commissioner for the benefit of the general fund of the state, on or before the fifteenth day of March of each year, with respect to the gross receipts of the preceding calendar year. The state tax commissioner shall adopt and publish rules and regulations not in conflict ~~herewith~~ with this section, as well as a ~~form of return and any other~~ the forms necessary to carry out the provisions of this section.

SECTION 2. REPEAL. Sections 47-21-01, 47-21-02, 47-21-03, 47-21-04, 47-21-05, 47-21-06, 47-21-07, 47-21-09, and 47-21-10 of the North Dakota Century Code are hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 559

HOUSE BILL NO. 1126
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

TRADEMARK REGISTRATION

AN ACT to amend and reenact subsection 6 of section 47-22-02 and sections 47-22-03, 47-22-04, 47-22-05, 47-22-06, 47-22-08, and 47-22-09 of the North Dakota Century Code, relating to the registration of trademarks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 47-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Consists of or comprises a trademark which so resembles a trademark registered in this state or a ~~trademark or trade name previously used in this state by another and not abandoned, corporate name, limited partnership name, or fictitious name registered with the office of the secretary of state,~~ as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

SECTION 2. AMENDMENT. Section 47-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-22-03. Application for registration. Subject to the limitations set forth in this chapter, any person who adopts and uses a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation;
2. The goods in connection with which the mark is used and the mode or manner in which the mark is used in connection

with such goods and the class, or classes, in which such goods fall;

3. The date when the trademark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business; and
4. A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application shall be signed ~~and verified~~ by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by a specimen or facsimile of such trademark in ~~triplicate~~ duplicate.

The application for registration shall be accompanied by a filing fee of twenty thirty dollars for one class of goods and twenty dollars for each additional class, payable to the secretary of state.

SECTION 3. AMENDMENT. Section 47-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-22-04. Certificate of registration. Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trademark, the date claimed for the first use of the trademark anywhere and the date claimed for the first use of the trademark in this state, the class, or classes, of goods and a description of the goods on which the trademark is used, a ~~reproduction~~ facsimile of the trademark, the registration date and the term of registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such trademark in any action or judicial proceedings in any court of this state.

SECTION 4. AMENDMENT. Section 47-22-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-22-05. Duration and renewal. Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed ~~within six months~~ prior

to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed in the same manner as a new application for a like term. A renewal fee of twenty thirty dollars for one class of goods and twenty dollars for each additional class, payable to the secretary of state, shall accompany the application for renewal of the registration.

A trademark registration may be renewed for successive periods of ten years in like manner.

The secretary of state shall notify registrants of trademarks hereunder of the necessity of renewal within the year next ninety days preceding the expiration of the ten years from the date of registration by writing to the last known address of the registrants.

Any registration in force on the date on which this chapter shall become effective shall expire ten years from the date of the registration or of the last renewal thereof or one year after the effective date of this chapter, whichever is later, and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

SECTION 5. AMENDMENT. Section 47-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-22-06. Assignment. Any trademark and its registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. Assignment shall be by instruments in writing duly executed and may be recorded with made by the assignor on forms provided by the secretary of state setting forth the name and business address of the assignor and the assignee, the trademark certificate number, and the class or classes of goods on which the trademark will appear. The assignment must be filed by the secretary of state upon the payment of a fee of five thirty dollars payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

SECTION 6. AMENDMENT. Section 47-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-22-08. Cancellation. The secretary of state shall cancel from the register:

1. After one year from the effective date of this chapter, all registrations under prior acts which are more than ten years old and not renewed in accordance with this chapter.
2. Any registration concerning which the secretary of state shall receive a voluntary written and signed request for cancellation thereof from the registrant or the assignee of record.
3. 2. All registrations granted under this chapter and not renewed in accordance with the provisions hereof.
4. 3. Any registration concerning which a state district court shall find any of the following:
 - a. That the registered trademark has been abandoned.
 - b. That the registrant is not the owner of the trademark.
 - c. That the registration was granted improperly.
 - d. That the registration was obtained fraudulently.
 - e. That the registration trademark is so similar, as to be likely to cause confusion or mistake or to deceive, to a trademark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his trademark in the United States Patent Office covering an area including this state, the registration hereunder shall not be canceled.
5. 4. When a district court shall order cancellation of a registration on any ground.

SECTION 7. AMENDMENT. Section 47-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-22-09. Classification. The following general classes of goods are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trademark may include any or all goods upon which the trademark is actually being used comprised in a single class, but in no event shall a single application include goods upon which the trademark is being used which fall within different classes of goods.

The said classes are as follows:

1. Raw or partly prepared materials.

2. Receptacles.
3. Baggage, animal equipment, portfolios and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
7. Cordage.
8. Smokers' articles, not including tobacco products.
9. Explosives, firearms, equipments, and projectiles.
10. Fertilizers.
11. Inks and inking materials.
12. Construction materials.
13. Hardware and plumbing and steam-fitting supplies.
14. Metals and metal castings and forgings.
15. Oils and greases.
16. Paints and painters' materials.
17. Tobacco products.
18. Medicines and pharmaceutical preparations.
19. Vehicles.
20. Linoleum and oiled cloth.
21. Electrical apparatus, machines, and supplies.
22. Games, toys, and sporting goods.
23. Cutlery, machinery, and tools, and parts thereof.
24. Laundry appliances and machines.
25. Locks and safes.
26. Measuring and scientific appliances.
27. Horological instruments.
28. Jewelry and precious-metal ware.

29. Brooms, brushes, and dusters.
30. Crockery, earthenware, and porcelain.
31. Filters and refrigerators.
32. Furniture and upholstery.
33. Glassware.
34. Heating, lighting, and ventilating apparatus.
35. Belting, hose, machinery packing, and nonmetallic tires.
36. Musical instruments and supplies.
37. Paper and stationery.
38. Prints and publications.
39. Clothing.
40. Fancy goods, furnishings, and notions.
41. Canes, parasols, and umbrellas.
42. Knitted, netted and textile fabrics, and substitutes therefor.
43. Thread and yarn.
44. Dental, medical, and surgical appliances.
45. Soft drinks and carbonated waters.
46. Foods and ingredients of foods.
47. Wines.
48. Malt beverages and liquors.
49. Distilled alcoholic liquors.
50. Merchandise not otherwise classified.
51. Cosmetics and toilet preparations.
52. Detergents and soaps.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 560

HOUSE BILL NO. 1586
(Cleveland)

HIGHER EDUCATION PATENT INCOME

AN ACT to amend and reenact section 47-28-02 of the North Dakota Century Code, relating to sharing of income from patents from inventions and discoveries by faculty, officials, and employees of state institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-28-02. Sharing of income from patents with inventor or discoverer. Each faculty member, official, or employee of a state institution of higher learning who conceives any inventions or makes any discovery as a result of research sponsored by his the faculty member's, official's, or employee's respective institution, and discharges his any obligations to his respective the institution shall be is entitled to share in any net proceeds that may be derived from the assignment, grant, license or other disposal of such the invention or discovery. The amount of such the net proceeds shall must be computed by or with the approval of the state board of higher education, with reasonable promptness after collection thereof, and after deducting from gross proceeds such the costs and expenses as may be reasonably allocated to the particular invention or discovery. The amount of the net proceeds paid to the faculty member, official, or employee of the institution shall must be determined by the institution as a general policy determination with the approval of the state board of higher education. A minimum of fifteen thirty percent of the net proceeds shall must be paid to a faculty member, official, or employee of a state institution of higher learning who solely conceived or made the invention or discovery, and shall must be paid in shares to two or more faculty members, officials, or employees who jointly made the invention or discovery in such respective proportions as each institution may determine.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 561

HOUSE BILL NO. 1247
(Committee on Industry, Business and Labor)
(At the request of the Board of University and School Lands)

ABANDONED PROPERTY

AN ACT to amend and reenact subsection 1 of section 47-30.1-06, subsections 2 and 5 of section 47-30.1-17, subsections 3 and 4 of section 47-30.1-18, section 47-30.1-22, subsection 3 of section 47-30.1-24, sections 47-30.1-26 and 47-30.1-35 of the North Dakota Century Code, relating to abandoned property under the Uniform Unclaimed Property Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-30.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within ~~twenty~~ seven years has:
 - a. In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;
 - b. Communicated in writing with the banking or financial organization concerning the property;
 - c. Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;
 - d. Owned other property to which subdivision a, b, or c applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed

abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

- e. Had another relationship with the banking or financial organization concerning which the owner has:
 - (1) Communicated in writing with the banking or financial organization; or
 - (2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

SECTION 2. AMENDMENT. Subsections 2 and 5 of section 47-30.1-17 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- 2. The report must be verified and include:
 - a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of ~~one hundred~~ fifty dollars or more presumed abandoned under this chapter.
 - b. In the case of unclaimed funds of ~~one hundred~~ fifty dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds.
 - c. In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder.
 - d. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under ~~one hundred~~ fifty dollars each may be reported in the aggregate.

- e. The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.
 - f. Other information the administrator prescribes by rule as necessary for the administration of this chapter.
5. Not more than one hundred twenty days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the owner's last known address informing the owner that the holder is in possession of property subject to this chapter if:
- a. The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;
 - b. The claim of the apparent owner is not barred by the statute of limitations; and
 - c. The property has a value of one hundred fifty dollars or more.

SECTION 3. AMENDMENT. Subsections 3 and 4 of section 47-30.1-18 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. The administrator is not required to publish in the notice any items of less than one hundred fifty dollars unless the administrator considers their publication to be in the public interest.
4. Not later than March first, or in the case of property reported by life insurance companies, not later than September first, of the year immediately following the report required by section 47-30.1-17, the administrator shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of one hundred fifty dollars or more presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last known address.

SECTION 4. AMENDMENT. Section 47-30.1-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-30.1-22. Public sale of abandoned property.

1. Except as provided in ~~subsections~~ subsection 2 and 3, the administrator, within three years after the receipt of

- abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property ~~for~~ at a public sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any public sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.
2. Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.
 3. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under section 47-30-1-10, delivered to the administrator must be held for at least one year before the administrator may sell them.
 4. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under section 47-30-1-10 and delivered to the administrator must be held for at least three years before the administrator may sell them. If the administrator sells any securities delivered pursuant to section 47-30-1-10 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to subsection 2 of section 47-30-1-23. A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted pursuant to subsection 2 of section 47-30-1-23, but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.

- 5- The purchaser of property at any sale conducted by the administrator pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

SECTION 5. AMENDMENT. Subsection 3 of section 47-30.1-24 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, together with any additional amount required by section 47-30.1-25. ~~If the claim is for property presumed abandoned under section 47-30.1-10 which was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater 47-30.1-21.~~

SECTION 6. AMENDMENT. Section 47-30.1-26 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-30.1-26. Action to establish claim. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the appropriate district court, naming the administrator as a defendant. The action must be brought within ninety days after the decision of the administrator or within one hundred eighty days after the filing of the claim if the administrator has failed to act on it. ~~if the aggrieved person establishes and is awarded the claim in an action against the administrator, the court shall award costs and reasonable attorney's fees.~~

SECTION 7. AMENDMENT. Section 47-30.1-35 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-30.1-35. Agreement to locate reported property.

1. All agreements to pay compensation to recover or assist in the recovery of property reported under section 47-30.1-17, made within twenty-four months after the date payment or delivery is made under section 47-30.1-19, are unenforceable.
2. An agreement entered into after such twenty-four month period is enforceable only if the agreement is in writing and the aggregate fee, compensation, or commission paid directly or indirectly is not in excess of twenty-five percent of the amount recovered.

Approved April 15, 1987
Filed April 15, 1987

PUBLIC BUILDINGS

CHAPTER 562

HOUSE BILL NO. 1172

(Committee on State and Federal Government)

(At the request of the Office of Management and Budget)

TELECOMMUNICATION FUNCTIONS

AN ACT to create and enact a new section to chapter 54-23.2 and three new sections to chapter 54-44.2 of the North Dakota Century Code, relating to radio communication functions by the director of institutions and telecommunication functions by the office of central data processing; to amend and reenact sections 48-07-01, 48-07-02, 48-07-03, 48-07-04, 54-21-19, subsection 3 of section 54-44-11, and sections 54-44.2-00.1 and 54-44.2-02 of the North Dakota Century Code, relating to telecommunication functions by the office of central data processing; and to repeal section 48-07-05 and chapter 54-23.1 of the North Dakota Century Code, relating to responsibility of the director of institutions for state communications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-07-01. Capitol telephone exchange - Establishment - Maintenance. The director of institutions office of central data processing shall maintain and operate a central telephone exchange in the state capitol.

SECTION 2. AMENDMENT. Section 48-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-07-02. Departments included in telephone exchange. All state offices and all of the departments, and agencies of state government housed in the state capitol shall use such the central telephone exchange for all telephone service. Each state office, department, ~~or~~ agency of state government, or state institution not housed in the capitol but located in the county of Burleigh, or the county of Morton, may use such the exchange if the head person in charge of such the office, department, agency, or institution and the director of institutions the office of central data processing jointly ~~shall~~ determine such service to be advantageous ~~thereto~~.

SECTION 3. AMENDMENT. Section 48-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-07-03. Telephone exchange - Rules and regulations made by director of institutions. The director of institutions shall have power to make and prescribe the office of central data processing may adopt rules and regulations necessary for the use, management, control, and operation of such the telephone exchange consistent with the provisions of this chapter.

SECTION 4. AMENDMENT. Section 48-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-07-04. Long distance telephone tolls-- Wide area telephone service. The director of institutions shall not be responsible for the collection or payment of tolls for long distance telephone calls to points outside of the state of North Dakota. Each office, department, agency, or institution, out of its appropriation for that purpose, shall pay tolls for out-of-state calls directly to the telephone company furnishing such service. The director of institutions is hereby authorized to the office of central data processing may contract for "wide area telephone service" within the state of North Dakota wide area telephone service for state government offices, departments, agencies, and institutions at the state capitol.

SECTION 5. AMENDMENT. Section 54-21-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-21-19. Director to furnish supplies and maintain capitol, state offices, and executive mansion and shall have authority - Authority to charge for services. The director of institutions shall provide all necessary fuel, electricity, insurance, janitorial, ~~telephone,~~ and other services necessary to maintain the state offices on the capitol grounds as well as all necessary furniture, fuel, electricity, express, freight, drayage, and all other necessary supplies for the executive mansion and the capitol grounds, and shall make all necessary repairs. Such The purchases shall must be in accordance with the provisions of chapter 54-44.4. The director shall charge an amount equal to the fair value of the office space and other services rendered to all departments which that receive and expend moneys from other than the general fund, except that for good cause the amounts charged may be waived by the director for a one-year period of time with such the waiver being subject to further annual renewals after proper application has been filed with the director.

SECTION 6. A new section to chapter 54-23.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Payment for law enforcement system. Each county shall pay the director of institutions for approximately fifty percent of the cost of the law enforcement telecommunications system, with charges to begin accruing on the first day the system becomes operational.

Payments must be made on the basis of the following schedule of charges:

1. Counties having a population of less than five thousand shall pay thirty dollars per month.
2. Counties having a population of five thousand or more but less than ten thousand shall pay sixty dollars per month.
3. Counties having a population of ten thousand or more but less than fifteen thousand shall pay ninety dollars per month.
4. Counties having a population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred twenty dollars per month.
5. Counties having a population of twenty-five thousand or more shall pay one hundred sixty dollars per month.

Other law enforcement agencies may participate in the law enforcement telecommunications system upon payment for their portion of this service at actual cost. The director of institutions may adjust payments for the law enforcement system. Adjustments to the rates to reflect changes in economic conditions and the general economy become effective on each July first following the review. Whenever the director considers an adjustment, the director shall consult with representatives of state and local units of government.

SECTION 7. AMENDMENT. Subsection 3 of section 54-44-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The office of management and budget shall establish a state central data processing operating fund to be used for the procurement and maintenance of data processing equipment and supplies and telecommunications equipment and supplies and for providing data processing and telecommunication services to state departments and agencies.

SECTION 8. AMENDMENT. Section 54-44.2-00.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-00.1. Definitions. As used in this chapter:

1. "Data processing" or "electronic data processing" means the systematic sequencing of operations performed by data processing equipment or programs, or both, upon data stored or entered in alphabetic, numeric, or alphanumeric format.

2. "Data processing equipment" means an electronic device or associated devices, except calculators and stand-alone noncommunicating word processors, which perform logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all compiling and related input, output, and storage, equipment, programs and procedures, and data processing communications facilities.
3. "Telecommunications" means the electronic exchange of voice, data, image, and video information.
4. "Transmission facilities" means terrestrial lines, and microwave, lightwave, and satellite facilities.
5. "Word processing" means the textual formatting, correcting, editing, and rearranging of language elements, designed to convey full messages in English syntax, through manipulation of electronic or magnetic impulses. "Word processors" are devices on which word processing can be carried out.

SECTION 9. AMENDMENT. Section 54-44.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-02. Office of central data processing - Powers and duties. The office of central data processing shall:

1. Provide systems design, programming, and other data processing services.
2. Design, plan, justify, and implement all data processing systems within and between state agencies which utilize the services of the office of central data processing.
3. Have the authority to purchase or lease such additional equipment or replace, including by trade or resale, present equipment as may be necessary to carry out the provisions of this chapter. Each executive branch department, agency, or institution, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general, shall submit to the director of central data processing for his approval or disapproval a written request for data processing services which require new data processing applications. A request shall also be submitted for modifications to existing data processing applications which are expected to increase the cost of operating such data processing applications by more than fifteen percent. The director of central data processing ~~shall have authority to may~~ approve or disapprove the lease, purchase, or other contractual acquisition of additional or new electronic data processing services or

equipment by executive branch agencies, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general. The director of central data processing may authorize a user agency to house and operate electronic data processing equipment.

4. Provide data processing assistance and advisory service to the legislative, executive, and judicial branches.
5. Establish and justify data processing activities and costs in order that effectiveness can be measured.
6. Perform all other duties necessary to carry out the provisions of this chapter.
- 7- Be authorized to establish Establish a data bank to eliminate the duplicate storage of common data and thereby develop more economical and efficient use of the data processing system. The data bank shall consist of data, except where data is restricted from such use by law and such confidentiality cannot be reasonably maintained in such data bank, contained within the files of all agencies, departments, and institutions being provided services by the office of central data processing. ~~in the event that~~ If the data bank contains data of use to other departments, agencies, and institutions, such data may be made available to such departments, agencies, and institutions after notice has been given to the agency, department, or institution from which the data was originally received.
- 8- 7. Analyze proposals for executive branch agency word processing equipment and facility acquisitions and make such comments and recommendations as it may believe necessary so that such equipment and facilities will be compatible with electronic data processing equipment and programs under the supervision of central data processing. The office of management and budget shall not approve vouchers for acquisition of word processing equipment and facilities by executive branch agencies unless such vouchers have attached to them the central data processing office's comments and recommendations.
8. Conduct conferences and meetings with various state agencies, departments, institutions, and political subdivisions to review proposals and provide information on improving telecommunications and transmission facilities in government.
9. Implement improvements in the state telecommunications and transmission facilities as are feasible and within the limitations of appropriated funds.

10. Adopt any rules determined to be necessary to establish standard procedures and practices in the development and use of telecommunications and transmission facilities provided by the office.
11. Perform all other duties necessary to carry out this chapter.

SECTION 10. A new section to chapter 54-44.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Improvement of telecommunication systems. The office of central data processing shall plan, coordinate, develop, and implement modern systems of communications. The director of central data processing may approve or disapprove the lease, purchase, or other contractual acquisition of telecommunications and transmission facilities equipment by executive branch agencies, except for the institutions and entities under the jurisdiction of the board of higher education, if replacement will improve the effectiveness and efficiency of the state communications system. The institutions and entities under the jurisdiction of the board of higher education together with the office of central data processing shall make joint use of telecommunications and transmission facilities as will result in less cost to the state.

SECTION 11. A new section to chapter 54-44.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Communications advisory committee. A communications advisory committee shall advise and assist the director of the office of central data processing in the execution of the telecommunication systems responsibilities. The committee consists of the attorney general, superintendent of the highway patrol, adjutant general, chief engineer of the public service commission, director of the state radio system, commissioner of higher education, director of the office of management and budget, highway commissioner, registrar of motor vehicles, and representatives from the various law enforcement organizations and any other persons the committee may designate. The director of the office of management and budget, or the director's designee, is the chairman of the committee. The chairman is to call the meetings of the committee.

SECTION 12. A new section to chapter 54-44.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Acceptance of federal funds. Funds received by a state agency or institution from the government of the United States for the purpose of matching state funds for the purpose of improving normal or emergency telecommunication systems may be deposited in the central data processing operating fund, unless the funds have been specifically appropriated by the legislative assembly for some other

purpose or unless transfer would be contrary to the federal regulations governing the grant. The director of the office of central data processing may apply for any public or private grants available for the improvement of telecommunication systems.

SECTION 13. REPEAL. Section 48-07-05 and chapter 54-23.1 of the North Dakota Century Code are hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 563

SENATE BILL NO. 2069

(Legislative Council)

(Interim Legislative Procedure and Arrangements Committee)

CAPITOL GROUNDS PLANNING COMMISSION GIFT
ACCEPTANCE

AN ACT to create and enact a new section to chapter 48-10 of the North Dakota Century Code, relating to the powers and duties of the capitol grounds planning commission and its authority to accept gifts; to amend and reenact section 48-10-01 of the North Dakota Century Code, relating to the capitol grounds planning commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-10-01. Capitol grounds planning commission. There is hereby created a The capitol grounds planning commission to be known as "The Capitol Grounds Planning Commission" consisting consists of the governor as chairman and eight other members selected biennially in a manner as herein provided in this section. The governor shall appoint two citizen members, the president of the senate shall appoint three senators as members, and the speaker of the house of representatives shall appoint three representatives, as members, who, together with the governor, shall constitute. Appointment to the capitol grounds planning commission and serve is for a term of two years. The planning commission shall function for the purpose of conferring with qualified consultants retained by it to select sites for buildings to be constructed on the capitol grounds and otherwise developing and modifying long-term plans for the development of the capitol grounds and performing such other duties as may be prescribed by law. The planning commission shall approve or disapprove the basic style and exterior construction of any building or facility constructed upon the capitol grounds. Legislative and citizen members of the planning commission shall be are entitled to per diem payments and expenses in such amount and in the same manner as provided by law for members of the legislative council.

SECTION 2. A new section to chapter 48-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Powers and duties of the commission - Authority to accept gifts. The capitol grounds planning commission shall confer with the state council on the arts with respect to the artistic value of monuments, memorials, or works of art to be constructed on the capitol grounds and with qualified consultants retained by it to select sites for buildings, facilities, monuments, memorials, or works of art to be constructed on the capitol grounds. The commission shall develop and modify long-term plans for the development of the capitol grounds. The commission shall approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the capitol grounds. Except as otherwise provided by this section, the commission has exclusive authority to accept or reject gifts of any type or class of property for exterior placement on the capitol grounds or for the improvement of the exterior construction of any building or facility on the capitol grounds. No construction or placement of an item on the capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the legislative assembly. If the legislative assembly by law or resolution authorizes the construction or placement of an item on the capitol grounds, the commission shall approve the site, basic style, and exterior construction of the item within a reasonable period of time. The commission shall perform any other duties as may be prescribed by law.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

PUBLIC UTILITIES

CHAPTER 564

SENATE BILL NO. 2442
(Senators Lodoen, W. Meyer, Nething)
(Representatives Martinson, Koland)

PSC RATE CHANGE HEARINGS

AN ACT to amend and reenact section 49-05-06 of the North Dakota Century Code, relating to hearings by the public service commission on proposed rate changes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-05-06. Hearing by commission on proposed change of rates. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, rule, or regulation, increasing or decreasing, or resulting in an increase or decrease in any rate, shall be filed with the commission, the commission may suspend by motion such rate, classification, contract, practice, rule, or regulation, but the period of suspension thereof shall not extend more than seven months for common carriers by rail and motor vehicle and for other public utilities ~~eleven months~~ beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of such rate, classification, contract, practice, rule, or regulation. On such hearing, the commission shall establish the rates, classifications, contracts, practices, rules, or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, regulation, rule or practice is just and reasonable shall be upon the public utility making application therefor. All such rates, classifications, contracts, practices, rules, or regulations not so suspended, on the expiration of thirty days from the time of filing the same with the commission, or of such lesser time as the commission may grant, shall go into effect and be the established and effective rates, classifications, contracts, practices, rules, and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 565

SENATE BILL NO. 2561
(Senators Kelsh, Reiten, Thane)
(Representatives Shockman, Shaw, Tollefson)
(Approved by the Committee on Delayed Bills)

RAILROAD RIGHT OF WAY ACQUISITION

AN ACT to create and enact two new sections to chapter 49-09 of the North Dakota Century Code, relating to acquisition of railroad rights of way; and to amend and reenact section 49-09-11.7 of the North Dakota Century Code, relating to the rulemaking authority of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-11.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-11.7. Rules for enforcement. The commission ~~is authorized~~ to may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the enforcement of sections 49-09-11.1 through 49-09-11.4, and sections 2 and 3 of this Act.

SECTION 2. A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Identification of railroad rights of way - Duties of commission. The commission shall identify operating railroad rights of way in this state which may be sold, transferred, or leased. The commission shall report periodically to the legislative audit and fiscal review committee on the commission's performance of the duties imposed on it under this section.

SECTION 3. A new section to chapter 49-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Acquisition of right of way. An operating right of way described in section 2 of this Act may be acquired in accordance with this section. That acquisition is subject to the following requirements:

1. Each carrier or other entity intending to acquire a railroad right of way shall file a notice of intent to do so with the commission, if any of the following applies:
 - a. The acquisition would be by a party that is not a railroad carrier, and would be of rail property that would be operated by a third party.
 - b. The operation would be by a new carrier and of rail property acquired by a third party.
 - c. There would be a change of operators on the line.
2. The notice required under subsection 1 must designate the complete private or corporate identity of the acquiring party, the complete identity of the divesting carrier, and a thorough description of the line involved. The notice must include financial information as to the acquiring entity. These documents are confidential and may not be divulged by the commission to any party.
3. An acquiring or divesting carrier shall attend conferences with the commission on reasonable notice, and shall respond to all questions and requests for information which are reasonably related, or may lead to information reasonably related, to the issue of whether the proposed transaction is consistent with law.

Approved April 21, 1987

Filed April 22, 1987

CHAPTER 566

SENATE BILL NO. 2157
(Committee on Transportation)
(At the request of the Public Service Commission)

LIGNITE TRANSPORTATION

AN ACT to repeal chapter 49-10 of the North Dakota Century Code, relating to the transportation of lignite by motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 49-10 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 567

HOUSE BILL NO. 1241
(Committee on Transportation)
(At the request of the Public Service Commission)

MOTOR CARRIER REGULATION

AN ACT to amend and reenact sections 49-18-06, 49-18-08, 49-18-13, 49-18-14, 49-18-15, and 49-18-18 of the North Dakota Century Code, relating to public service commission regulation of common motor carriers; and to repeal sections 49-18-21 and 49-18-46 of the North Dakota Century Code, relating to public service commission regulation of common motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-06. Public policy affecting motor transportation. All common motor carriers, special common motor carriers of buildings, and contract motor carriers are hereby declared to be affected with a public interest and to be subject to regulation as prescribed by this chapter and other applicable provisions of law. Among the purposes to be served are:

1. ~~To relieve the existing and future undue burdens upon the highways arising by reason of the use of such highways by motor vehicles for hire.~~
- 2- To protect the safety and welfare of the traveling and shipping public in their use of the highways.
- 3- 2. To encourage sound economic conditions of efficient and well-managed carriers.
- 4- 3. To promote safe, adequate, economical, and efficient transportation.
- 5- 4. To encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices.

- 6- 5. To encourage the most productive use of equipment and energy resources.
- 7- 6. To encourage the establishment and maintenance of a sound, safe, and competitive privately owned motor carrier transportation system.

SECTION 2. AMENDMENT. Section 49-18-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-08. Regulation of common motor carriers by commission. The commission shall supervise and regulate all common motor carriers of property or passengers as defined in ~~section 49-18-01~~ and ~~after hearing thereon~~ shall:

1. Fix, alter, regulate, and determine just, fair, reasonable, and sufficient rates, fares, charges, and classifications;
2. Regulate the facilities, accounts, service, and safety of operations of each such carrier;
3. Regulate operating ~~and time~~ schedules ~~so~~ as to meet the needs of any community and ~~so~~ as to ensure adequate transportation service to the territory ~~traversed~~ served by such carrier;
4. Prevent unfair competition ~~and unjust~~, discrimination, or preferences between common motor carriers;
5. Require the filing of annual and other reports, tariffs, and schedules, ~~and other data~~ by such common motor carriers;
6. Supervise and regulate such common motor carriers in all matters affecting the ~~relation~~ relations between such common motor carriers and the public to the end that comply with the provisions of this chapter may be fully and completely carried out; and
7. Have power and authority, by general order or otherwise, to prescribe Adopt rules and regulations in conformity with this chapter applicable to any and all such common motor carriers, and to do all things necessary to carry out and enforce the provisions of this chapter.

SECTION 3. AMENDMENT. Section 49-18-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-13. Notice of opportunity for hearing on application. Upon the filing of an application for a certificate of public convenience and necessity or a contract motor carrier permit, the commission shall

cause mail notice of opportunity for hearing to be served by mail upon every common carrier which is operating, or which has applied for a certificate to operate, in the territory proposed to be served by the applicant, and on other interested parties as determined by the commission interested parties requesting the notice.

SECTION 4. AMENDMENT. Section 49-18-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-14. Factors to be considered by commission in granting certificate. Before granting a certificate to a common motor carrier, the commission shall take into consideration:

1. The need for service proposed by the applicant;
2. The increased cost of maintaining the highway concerned;
- 3- The effect on other existing transportation facilities;
- 4- 3. The fitness and ability of applicant to provide service;
- 5- 4. Adequacy of proposed service; and
- 6- 5. Such other information as the commission may deem appropriate.

If the commission finds that the transportation to be authorized by the certificate is not consistent with the public convenience and necessity the commission shall not grant such certificate.

SECTION 5. AMENDMENT. Section 49-18-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-15. Testimony - Issuance of certificate or permit - Conditions. Any common carrier or other party upon whom notice of opportunity for hearing shall be served may request an oral evidentiary hearing and may offer testimony for or against the granting of a certificate. However, as a condition for offering testimony opposing an application at an oral evidentiary hearing, such interested party must file a protest and a request for an oral evidentiary hearing with the commission and the applicant within twenty days of receipt of the notice for opportunity for hearing and must indicate the nature of the protest, along with a list of witnesses to be called by the protestant and the approximate time needed to present the protestant's case. Any other interested person may offer testimony for the granting of a certificate at such hearing. If the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it may issue the certificate as prayed for, or may issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by the certificate such terms and conditions as in its judgment the public convenience and

necessity may require. Otherwise such certificate shall be denied. A party opposing an application may offer testimony at an oral hearing if it filed a protest and request for hearing with the commission and the applicant within twenty days of receipt of the notice. The protest must state the objection, the protestant's witnesses, and the time needed to present the protestant's case. A party supporting an application may offer testimony at the oral hearing. Based upon the evidence, the commission may grant or deny, in whole or in part, the certificate or permit requested.

SECTION 6. AMENDMENT. Section 49-18-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-18. Reasonable rates to be made by common motor carrier. All rates, fares, and charges made by any common motor carrier shall be just and reasonable, and shall not be unlawfully discriminatory, prejudicial, nor preferential. No such carrier shall charge, demand, collect, or receive for the transportation of passengers or property, or for any service in connection therewith, a remuneration which is more or less than, or different from, the rates, fares, and charges which legally have been established and filed with the commission, nor shall any such carrier refund and remit in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with the commission or ordered by the commission at the rate set in its tariff and may not refund in any manner. Rate reductions may be filed with the commission effective on one or more day's notice without commission approval. The commission shall retain the right to suspend such rate reductions within thirty days of filing.

SECTION 7. REPEAL. Section 49-18-46 of the North Dakota Century Code, and section 49-18-21 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 568

HOUSE BILL NO. 1491
(Koland)

HIGH VOLTAGE OVERHEAD LINES

AN ACT to create and enact a new section to chapter 49-21.1 of the North Dakota Century Code, relating to work near high voltage overhead lines; and to amend and reenact sections 49-21.1-01, 49-21.1-04, and 49-21.1-05 of the North Dakota Century Code, relating to work near high voltage overhead lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-01. Definitions. As used in this chapter, ~~unless the context otherwise requires:~~

1. "High voltage" means a voltage in excess of six hundred ~~fifty~~ volts between conductors or between any single conductor and the ground.
2. "Overhead lines or overhead conductors" means ~~all bare or insulated~~ electrical conductors installed above the ground ~~excepting these, except~~ conductors ~~that are~~ deenergized and grounded or ~~that are~~ enclosed in ~~iron pipe protective conduit~~ or other metal covering ~~of equal strength~~.
3. "Person" means a person, firm, corporation, or association, individually or through an agent or employee, or a person acting as an agent or employee of any person, firm, corporation, or association.

SECTION 2. A new section to chapter 49-21.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Work near high voltage overhead lines - Safety requirements - Notice - Costs. If any work is performed within six feet [1.83 meters] of any high voltage overhead line, or if mechanical

equipment or machinery used near high voltage overhead lines is capable of motion to within ten feet [3.05 meters] of any high voltage overhead line, the person responsible for the work shall notify the operator of the high voltage overhead line of the intent to work near the line. The work may be pursued only after the person and the operator of the line have provided protection for endangered persons by mechanical or insulated barriers, by deenergizing and grounding the line, or by temporary relocation of the line. The person working near the overhead line must pay the operator actual expenses necessary to meet the requirements of this chapter, except that the operator of the line is responsible for the cost if the line was installed closer to an existing fixture or structure than the minimum clearance required by the latest edition of the national electrical safety code, as adopted by the public service commission. The operator of the line need not take the precautions until the person working near the line pays the necessary expenses. Within five business days after payment of those expenses, or as otherwise agreed upon in writing by the person responsible for the work, the operator of the line shall complete the arrangements for protection of endangered persons.

SECTION 3. AMENDMENT. Section 49-21.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-04. Penalty. Every Any person, firm, corporation, association, or any agent or employee of any such person, firm, corporation, or association who violates any of the provisions of this chapter shall be guilty of an infraction is subject to a civil penalty not to exceed one thousand dollars. The civil penalty may be recovered by action prosecuted by the state's attorney of the county where the violation occurred.

SECTION 4. AMENDMENT. Section 49-21.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21.1-05. Exceptions. This chapter shall does not apply to:

1. Construction, reconstruction, operation, or maintenance of any high voltage overhead conductor, supporting structure, or appurtenances for the support or operation of a high voltage conductor by persons authorized by the owner or operator.
2. Work ~~being done~~ on telecommunications, coaxial, signaling, and other communication circuits or their supporting structures, or other circuits and their supporting structures which are not high voltage ~~as defined in section 49-21-1-01.~~
3. The operation or maintenance of ~~any~~ railroad equipment or vehicles ~~traveling or moving upon~~ on fixed rails or railroad right of way.

4. Work by any employee of an industrial plant on the electrical system of the plant.
5. Work by any employee of an electrical or communications contractor performed under the employer's supervision.
6. The operation of highway vehicles, agricultural equipment, or agricultural aircraft which in normal use may incidentally pass within the ten-foot [3.05-meter] clearance limitation.
7. Governmental entities responding to an emergency situation.
8. Work by any employee of a surface coal mining company in the course of coal mining activities.
9. The state and its agencies.

Approved March 27, 1987
Filed March 30, 1987

PUBLIC WELFARE

CHAPTER 569

HOUSE BILL NO. 1459
(Stofferahn, A. Olson, Haugland)

COUNTY SOCIAL SERVICE BOARD MEMBER COMPENSATION

AN ACT to amend and reenact section 50-01-08 of the North Dakota Century Code, relating to the compensation of members of county social service boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-01-08. Members of county social service board - Term of office - Oath - Compensation. The members of the county social service board shall serve for a term of three years or until their successors have duly qualified. Their terms of office shall be arranged so that the term of office of one of the members shall expire in one year, the term of one-half of the remaining members the next year, and the term of the remaining members the third year. Each member of the board shall qualify by taking the oath provided for civil officers. Such oath shall be filed with the county auditor. The members of the county social service board shall receive, in addition to any salaries they may receive from any other source, from the state or county or any municipality, a sum not to exceed ~~twenty-five~~ thirty-five dollars per day for time actually spent in transacting the business of the board not exceeding a maximum of twenty-five days a year. Members shall be reimbursed by the county for expenses actually incurred in the performance of their official duties and shall be paid legal mileage for necessary travel. In counties having a population in excess of thirty thousand, members of the county social service board shall receive, in addition to any salaries they may receive from any other source, from the state or county or any municipality, a sum not to exceed ~~twenty-five~~ thirty-five dollars per day for time actually spent in transacting the business of the board not to exceed a maximum of thirty-five days a year. Members shall be reimbursed by the county for expenses actually incurred in the performance of their official duties and shall be paid legal mileage for necessary travel.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 570

HOUSE BILL NO. 1034
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICES DEPARTMENT STRUCTURE

AN ACT to amend and reenact subsection 4 of section 14-09-09.8, sections 14-13-03, 23-16-08, 25-01-01, 25-10-01, 25-11-02, 25-15-03, 25-15-08, subsection 2 of section 25-16-01, sections 25-16-02, 25-16-03, 25-16-04, 25-16-06, 25-16-08, 25-16-09, 25-16-10, 25-16-12, 50-06-01.4, subsection 1 of section 50-19-01, sections 50-19-02, 50-19-03, 50-19-03.1, 50-19-04, 50-19-06, 50-19-07, 50-19-09, 50-19-10, 50-19-12, 50-19-13, 50-19-14, 50-20-01, 50-20-02, subsections 3 and 7 of section 50-25.1-02, sections 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-05, subsection 2 of section 50-25.1-05.2, sections 50-25.1-05.3, 50-25.1-06, 50-25.1-07, 50-25.1-11, and 54-38-01 of the North Dakota Century Code, relating to the structure of the department of human services; and to repeal sections 25-01-02.1, 25-10-02, and 54-38-02 of the North Dakota Century Code, relating to the authority of the state health council to investigate the mental health of persons admitted to the state hospital, the state children's psychiatric outpatient clinic, and the alcoholism and drug abuse division.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 14-09-09.8 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A copy of the order and accompanying documents have been sent to the ~~child support enforcement unit of the~~ department of human services.

SECTION 2. AMENDMENT. Section 14-13-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-13-03. Definitions. In this chapter unless the context or subject matter otherwise requires:

- * NOTE: Section 14-09-09.8 was also amended by section 16 of House Bill No. 1903, chapter 183.

1. "Appropriate authority in the receiving state" as used in paragraph 1 of article V of the compact with reference to this state means the executive director of the children and family services division of the department of human services.
2. "Appropriate public authorities" as used in article III of the compact with reference to this state means the children and family services division of the department of human services, and the division department shall receive and act with reference to notices required by article III.

SECTION 3. AMENDMENT. Section 23-16-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-16-08. Offering or advertising to dispose of infants prohibited. No hospital providing maternity care shall in any way offer to dispose of any child or advertise that it will give children for adoption or hold itself out, directly or indirectly, as being able to dispose of children, however, such hospitals may inform an unmarried mother of child-placing agencies licensed by the children and family services division of the department of human services.

SECTION 4. AMENDMENT. Section 25-01-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01-01. Definitions. In this title unless the context or subject matter otherwise requires:

1. "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs his mental health.
2. "Mentally deficient person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing himself and his affairs and to require supervision, control, and care for his own or the public welfare.
3. "Defective delinquent" ~~shall mean~~ means an incompetent mentally deficient person over eighteen years of age who has been found, in accordance with the procedures established in chapter 25-04, to have demonstrated a pattern of aggravated antisocial behavior such as to present a probable peril to the life, person, or property of others, or who has given substantial evidence of continuing propensity for such behavior.
4. "State hospital" ~~shall mean~~ means the state hospital for the mentally ill.

5. "State school" ~~shall mean~~ means the Grafton state school and San Haven.
6. ~~Repealed by S-L- 1979, ch- 315, § 19-~~
- 7- "School for the blind" ~~shall mean~~ means the North Dakota school for the blind.
- 8- 7. "School for the deaf" ~~shall mean~~ means the school for the deaf of North Dakota.
- 9- 8. "Director" ~~shall mean~~ means the director of institutions.
- 10- 9. "Superintendent" ~~shall mean~~ means the superintendent of the state hospital, of the state school, of San Haven, of the school for the blind, or of the school for the deaf, as the case may be.
- 11- 10. "Licensed physician" means an individual licensed under the laws of this state to practice medicine and also means a medical officer of the government of the United States while in this state in the performance of his official duties.
- 12- ~~Repealed by S-L- 1961, ch- 209, § 5-~~
- 13- 11. "Supervising officer" ~~shall mean~~ means the state health officer of the state department of health, mental health division of the state executive director of the department of human services, or the director of institutions, as the case may be.

SECTION 5. AMENDMENT. Section 25-10-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-10-01. Mental health division services. ~~There is hereby established within the The~~ department of human services a division to be known as the mental health division to shall perform the following functions in the field of mental health:

1. Cooperate in providing services to state and local departments and agencies and other groups for programs of prevention of mental illness, ~~mental retardation,~~ and other psychiatric disabilities.
2. Assist in providing informational and educational services regarding mental health to the public and lay and professional groups.
3. Assist in providing consultative services to schools, courts, and health and welfare human service agencies, both public and private.

4. Assist in providing outpatient diagnostic and treatment services.
5. Assist in providing rehabilitation services for patients suffering from mental or emotional disorders and other psychiatric conditions, particularly those who have received prior treatment in an inpatient facility.

The above services shall be undertaken by the department of human services to the extent funds are available to the department for the performance of these functions.

SECTION 6. AMENDMENT. Section 25-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-11-02. Compact administrator - Powers. Pursuant to said compact, the executive director of the mental health and retardation division department of human services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate may adopt rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder.

SECTION 7. AMENDMENT. Section 25-15-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-03. Advisory committee. The vocational rehabilitation division shall appoint a vocational rehabilitation facilities advisory committee, nine members of which shall be representatives of each of the following state organizations or agencies:

1. Vocational rehabilitation division.
2. Department of public instruction - special education.
3. Office of management and budget.
4. Job service North Dakota.
5. Organized labor.
6. ~~Mental health division~~ Department of human services.
7. North Dakota chapter association of retarded persons.
8. Vocational education - special needs.
9. Grafton state school.

At least four members shall be appointed from professional, legislative, or civic groups, or from other public or nonpublic voluntary agencies. Such members shall serve at the pleasure of the vocational rehabilitation division without compensation.

It shall be the duty of the ~~The~~ vocational rehabilitation facilities advisory committee ~~to~~ shall recommend standards for community rehabilitation facilities for the handicapped and ~~to~~ submit the recommendations to the appropriate state departments involved in the licensure of the facilities for their approval. These standards shall include those for physical plant, programming, staff, ratio of staff to persons served, policies, records and reports required, and such other standards as the committee deems appropriate. The committee shall also advise the division on the general policy involved in the provision of rehabilitation facilities services and shall perform such other functions as the division may request.

SECTION 8. AMENDMENT. Section 25-15-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-15-08. Recognition by the division of physical plant licensing by the state department of health and the ~~developmental disabilities division~~ department of human services. In lieu of the vocational rehabilitation division conducting an independent inspection of the physical plant of facilities licensed under chapter 23-16 or 25-16, the division may recognize and accept for purposes of this chapter the licensure of the physical plant of such facilities by the state department of health or by the ~~developmental disabilities division~~ of the department of human services. Division recognition and acceptance of the license issued by the state department of health or the ~~developmental disabilities division~~ department of human services shall not exempt the facilities applying for license under this chapter from the program standards established by the vocational rehabilitation division.

SECTION 9. AMENDMENT. Subsection 2 of section 25-16-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "~~Division~~" "Department" means the ~~developmental disabilities division of the state~~ department of human services.

SECTION 10. AMENDMENT. Section 25-16-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-02. License required. The operator of a treatment or care center for developmentally disabled persons shall secure annually from the ~~division~~ department a license as required by rules adopted under this chapter.

SECTION 11. AMENDMENT. Section 25-16-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-03. Requirements for license. The division department shall issue a license for the operation of a treatment or care center for developmentally disabled persons upon a showing that:

1. The premises to be used are in fit safe sanitary condition and properly equipped to provide good care and treatment;
2. The persons in active charge of the center and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The health, morality, safety, and well-being of the residents cared for and treated therein will be properly safeguarded;
4. There is sufficient entertainment, treatment, educational, and physical facilities and services available to the residents therein;
5. Appropriate arrangements are made for a medical and psychological examination of each resident; and
6. The provider is in compliance with rules adopted by the division department under this chapter.

SECTION 12. AMENDMENT. Section 25-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-04. Inspection and report by division department. The division department shall inspect the facilities and premises of the applicant to determine sanitary conditions and the adequacy of medical and nursing services.

SECTION 13. AMENDMENT. Section 25-16-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-06. Division Department to prescribe forms - Regulations Rules. The division department may prescribe forms for the registration and record of the persons residing in treatment or care centers for developmentally disabled persons and may adopt reasonable rules and regulations for the conduct of such centers as are necessary to carry out the purposes of this chapter.

SECTION 14. AMENDMENT. Section 25-16-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-08. Revocation of license. The division department may revoke a license of a treatment or care center for developmentally disabled persons upon a proper showing that:

1. Any of the conditions set forth in section 25-16-03 as requirements for the issuance of the license no longer exists;
2. The license was issued upon fraudulent or untrue representations;
3. The owner or operator has violated any of the rules and regulations of the division department; or
4. The owner or operator of the center has been guilty of an offense determined by the division department to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the division department determines, following conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 15. AMENDMENT. Section 25-16-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-09. Hearing on denial or revocation of license. Before any application for a license to conduct a treatment or care center for developmentally disabled persons is denied or before the revocation of such license by the division department, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall have the right to a hearing before the division department, if such a hearing is requested within ten days after service of written charges.

SECTION 16. AMENDMENT. Section 25-16-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-10. Purchase of services. The developmental disabilities division of the state department of human services is hereby authorized to may purchase from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for developmentally disabled persons from any treatment or care center for such persons licensed in the this state of North Dakota.

SECTION 17. AMENDMENT. Section 25-16-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-16-12. Division efforts Efforts to obtain private and governmental grants. The developmental disabilities division of the state department of human services and the duly licensed treatment

or care centers for developmentally disabled persons are hereby authorized to may exert all possible efforts to obtain grants, both private and governmental, for the care, custody, treatment, training, and education of developmentally disabled persons.

* SECTION 18. AMENDMENT. Section 50-06-01.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.4. Structure of the department. The department shall ~~include~~ includes the state hospital, an office of human services, ~~an office of economic assistance and county administration~~ the governor's council on human resources, the regional human service centers, a vocational rehabilitation division including regional vocational rehabilitation offices, unit, and other units or offices and administrative and fiscal support services as the executive director deems determines necessary, and as many other subdivisions as the executive director may deem appropriate, or as may be provided by law.

- 1- The office of human services shall contain the following divisions:
 - a- Developmental disabilities division-
 - b- Mental health division-
 - c- Children and family services division-
 - d- Aging services division-
 - e- Alcoholism and drug abuse division-
 - f- Crippled children's services division-
- 2- The office of economic assistance and county administration shall include the following divisions:
 - a- Economic assistance division, including a feed stamp unit, an assistance payments unit, a fuel assistance unit, and a child support enforcement unit-
 - b- Medical services division-

Regional supervisors of economic assistance shall be collocated with regional human service centers and shall be responsible for maintaining a close working relationship between county social service boards and regional human service centers. The department shall be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

* NOTE: Section 50-06-01.4 would have been amended by section 5 of House Bill No. 1033, chapter 766, which was vetoed.

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001, et seq.], home and community-based services, licensure of adult family care homes, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. Administration of economic assistance programs, including aid to families with dependent children, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, the licensure of

boarding homes for the aged and infirm, utilization control, and claims processing.

The executive director of the department shall be responsible for consulting consult with and maintaining maintain a close working relationship with the department of health; with the director of institutions and the superintendents of the Grafton state school; the school for the deaf; and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

SECTION 19. AMENDMENT. Subsection 1 of section 50-19-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "~~Division~~" "Department" means the children and family services division of the department of human services.

SECTION 20. AMENDMENT. Section 50-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-02. License required. Any person, partnership, voluntary association or corporation, which operates a maternity home for unmarried mothers shall secure annually from the division department a license as required in this chapter.

SECTION 21. AMENDMENT. Section 50-19-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-03. Requirements for license. A license for the operation of a maternity home for unmarried mothers shall be issued by the division department to a reputable and responsible person, partnership, voluntary association or corporation, upon showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide good care and treatment;
2. The persons in active charge of the home and their assistants are qualified by training and experience to carry on efficiently the duties required of them;
3. The home is to be conducted for the public good and in accordance with sound social policy; and
4. The health and well-being of the infants born therein and the health, morality, and well-being of the parties treated therein will be properly safeguarded.

SECTION 22. AMENDMENT. Section 50-19-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-03.1. Conviction not bar to licensure - Exceptions. Conviction of an offense ~~shall~~ does not disqualify a person from licensure under this chapter unless the ~~division~~ department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or operator of a maternity home for unmarried mothers, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 23. AMENDMENT. Section 50-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-04. Inspection and report by state department of health. The ~~division~~ department shall give notice to the state department of health of all applications for license to operate a maternity home for unmarried mothers. Upon receipt of such notice, the state department of health shall inspect the facilities and premises of the applicant to determine sanitary conditions and the adequacy of medical and nursing services, and shall report its findings to the ~~division~~ department.

SECTION 24. AMENDMENT. Section 50-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-06. Regulation by ~~division~~ department. The ~~division~~ department may prescribe forms for the registration and record of persons cared for in maternity homes for unmarried mothers and ~~shall make such~~ may adopt reasonable rules ~~and regulations~~ for the conduct of such homes as are necessary to carry out the purposes of this chapter. The ~~division~~ department shall require reports from the licensee which shall include a statement of plans made for the unmarried mother and her child.

SECTION 25. AMENDMENT. Section 50-19-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-07. Inspection of maternity home for unmarried mothers and the records thereof. The ~~division~~ department and its authorized agents may inspect any maternity home for unmarried mothers licensed under ~~the provisions of~~ this chapter at any time. The ~~division~~ department and its agents shall have free access to every part of such home and to the records thereof, and they may see and interview the patients therein.

SECTION 26. AMENDMENT. Section 50-19-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-09. Reporting births. The licensee of a maternity home for unmarried mothers shall report each birth occurring within the home

to the state department of health in accordance with chapter 23-02.1, and to the division department as may be provided by law.

SECTION 27. AMENDMENT. Section 50-19-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-10. Records of maternity home confidential. No agent of the state department of health or the division department, or the licensee, under the provisions of this chapter, shall may disclose the contents of the records of a maternity home for unmarried mothers nor of the reports received therefrom, except:

1. In a judicial proceeding when ordered by the presiding judge; or
2. To officers of the law or other legally constituted boards or agencies serving the interests of the patient or her infant.

SECTION 28. AMENDMENT. Section 50-19-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-12. Revocation of license. The division department may revoke a license of any maternity home for unmarried mothers upon a proper showing of any of the following:

1. Any of the conditions set forth in section 50-19-03 as requirements for the issuance of the license no longer exists.
2. The license was issued upon fraudulent or untrue representations.
3. The owner or operator has violated any of the rules **and regulations** of the division department.
4. The owner or operator of the maternity home has been guilty of an offense determined by the division department to have a direct bearing upon a person's ability to serve the public as an owner or operator, or the division department determines, following his the owner's or operator's conviction of any other offense, that the owner or operator is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 29. AMENDMENT. Section 50-19-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-13. Hearing on denial or revocation of license. Before any application for a license to conduct a maternity home for unmarried mothers shall be denied or before the revocation of any such license by the division department, written charges as to the reasons therefor shall be served upon the applicant or licensee, who shall have the right to a hearing before the department **of human services**,

if ~~such~~ a hearing is requested within ten days after service of the written charges.

SECTION 30. AMENDMENT. Section 50-19-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-19-14. Cooperation of interested persons and agencies. The licensee of a maternity home for unmarried mothers, the physician, or other responsible person in attendance at birth, the state department of health and its agents, and the ~~division~~ department and its agents shall cooperate in all measures and services for improving and safeguarding the health and social well-being of maternity patients and their infants cared for in a maternity home for unmarried mothers.

SECTION 31. AMENDMENT. Section 50-20-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-01. Births out of wedlock to be reported. All births out of wedlock in ~~the this state of North Dakota shall~~ must be reported to the ~~children and family services division of the~~ department of human services within twenty-four hours after the birth occurs. The report shall include the date and place of birth, the sex of the child, the name of the mother, the name of the attending physician, and such other information as the ~~division~~ department may require.

SECTION 32. AMENDMENT. Section 50-20-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-20-02. Births with congenital deformities to be reported. All births in ~~North Dakota this state~~ of children with a visible congenital deformity shall be reported to the ~~crippled children's services division department of human services~~ within three days after ~~such the~~ birth occurs. The report shall include the date and place of birth, the sex of the child, the names of the parents, the name of the physician or other person attending birth, a diagnosis and description of the deformity, and ~~such any~~ other information as the ~~division~~ department may require.

* **SECTION 33. AMENDMENT.** Subsections 3 and 7 of section 50-25.1-02 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. "~~Division~~" "Department" means the ~~children and family services division of the~~ department of human services.
7. "State child protection team" means a multidisciplinary team consisting of the designee of the ~~executive~~ director of the ~~division~~ department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the office of the attorney general, a

* NOTE: Section 50-25.1-02 was also amended by section 1 of House Bill No. 1254, chapter 584, and by section 1 of Senate Bill No. 2244, chapter 583.

representative of the department of public instruction, a representative of the director of institutions, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agency which they represent, or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three persons.

* SECTION 34. AMENDMENT. Section 50-25.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03. Persons required and permitted to report - To whom reported.

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, social worker, day care center or any other child care worker, police or law enforcement officer having knowledge of or reasonable cause to suspect that a child coming before him that person in his that person's official or professional capacity is abused or neglected shall report the circumstances to the division department.
2. Any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the division department.

** SECTION 35. AMENDMENT. Section 50-25.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03.1. Photographs and x-rays. Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report and, if indicated by medical consultation, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian. All photographs taken pursuant to this section shall be taken by law enforcement officials upon the request of any person or official required to report under this chapter. All photographs and x-rays taken, or copies of them, shall be sent to the division department at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

* NOTE: Section 50-25.1-03 was also amended by section 2 of Senate Bill No. 2244, chapter 583.

** NOTE: Section 50-25.1-03.1 was also amended by section 3 of Senate Bill No. 2244, chapter 583.

* SECTION 36. AMENDMENT. Section 50-25.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04. Method of reporting. All persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made to the division department. Oral reports shall be followed by written reports within forty-eight hours if so requested by the executive director of the division department or his the executive director's designee. Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made under this chapter.

** SECTION 37. AMENDMENT. Section 50-25.1-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04.1. State child protection team - How created - Duties. The executive director of the division department shall name the members of the state child protection team. The members shall be appointed for three-year staggered terms. The member who represents the division department shall serve as chairperson and shall be responsible for the transmittal of all team reports made pursuant to this chapter. The chairperson shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02, 50-25.1-04, and 50-25.1-05.1. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate. All reports or recommendations issued shall be subject to the provisions of section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected.

*** SECTION 38. AMENDMENT. Section 50-25.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The executive director of the division department shall forthwith investigate, or cause to be investigated, any report of child abuse or neglect made directly to the executive director, including the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.

**** SECTION 39. AMENDMENT. Subsection 2 of section 50-25.1-05.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In all other cases, upon a determination that probable cause exists to believe that child abuse or neglect is indicated, the executive director of the division

* NOTE: Section 50-25.1-04 was also amended by section 4 of Senate Bill No. 2244, chapter 583.

** NOTE: Section 50-25.1-04.1 was also amended by section 5 of Senate Bill No. 2244, chapter 583.

*** NOTE: Section 50-25.1-05 was also amended by section 6 of Senate Bill No. 2244, chapter 583.

**** NOTE: Section 50-25.1-05.2 was also amended by section 8 of Senate Bill No. 2244, chapter 583.

department or a designee of the executive director shall promptly make written report to the juvenile court having jurisdiction in the matter.

* SECTION 40. AMENDMENT. Section 50-25.1-05.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare. Upon determination by the division department or its designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the division department may refer the report to an appropriate law enforcement agency for investigation and disposition.

** SECTION 41. AMENDMENT. Section 50-25.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-06. Protective and other services to be provided. The division department and the appropriate county social service board shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being, and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children.

*** SECTION 42. AMENDMENT. Section 50-25.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-07. Protective custody. Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian, or other person having responsibility for the care of the child that he the physician suspects has been abused or neglected, may keep the child in the custody of the hospital or medical facility for not to exceed ninety-six hours and must immediately notify the juvenile court and the division department in order that child-protective proceedings may be instituted.

**** SECTION 43. AMENDMENT. Section 50-25.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. All reports made under this chapter, as well as any other information obtained, are confidential and shall be made available to:

1. A physician who has before him a child whom he the physician reasonably suspects may have been abused or neglected.

* NOTE: Section 50-25.1-05.3 was also amended by section 9 of Senate Bill No. 2244, chapter 583.

** NOTE: Section 50-25.1-06 was also amended by section 10 of Senate Bill No. 2244, chapter 583.

*** NOTE: Section 50-25.1-07 was also amended by section 11 of Senate Bill No. 2244, chapter 583.

**** NOTE: Section 50-25.1-11 was also amended by section 12 of Senate Bill No. 2244, chapter 583.

2. A person who is authorized to place a child in protective custody and has before him a child whom he the person reasonably suspects may have been abused or neglected and the person requires the information in order to determine whether to place such child in protective custody.
3. Authorized staff of the division department, appropriate county social service boards, and appropriate state and local child protection team members.
4. Any person who is the subject of a report; provided, however, that the identity of persons reporting under this chapter is protected.
5. Public officials and their authorized agents who require such information in connection with the discharge of their official duties.
6. A court whenever it determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose; provided, however, that no information identifying the subjects of a report is made available to the researcher unless the information is absolutely essential to the research purpose and the executive director of the division department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.

SECTION 44. AMENDMENT. Section 54-38-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-38-01. **Definitions.** In this chapter unless the context or subject matter otherwise requires:

1. "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or while chronically or habitually under the influence of alcoholic beverages, endangers public morals, health, safety, or welfare.
2. "Alcoholism" means the pathological condition attendant upon the excessive and habitual use of alcoholic beverages.
3. "Department" means the department of human services.

4. "Division" means the alcoholism and drug abuse division within the department.
5. "Drug abuse" means the use of drugs solely for their stimulant, depressant, or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent prescribed in the course of medical treatment or in a program of research operated under the direction of a physician or pharmacologist.
6. 5. "Drug dependent persons" means any person who has developed a state of psychic or physical dependence, or both, upon a drug following administration of that drug upon a repeated periodic or continuous basis.
7. 6. "Patients" means persons who are under the supervision or care of the department.

SECTION 45. REPEAL. Sections 25-01-02.1, 25-10-02, and 54-38-02 of the North Dakota Century Code are hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 571

HOUSE BILL NO. 1156
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

DEPENDENT CHILD ASSISTANCE

AN ACT to create and enact a new subsection to section 50-06-05.1 and two new sections to chapter 50-09 of the North Dakota Century Code, relating to special needs adoptions, foster care children, and rulemaking authority; to amend and reenact sections 50-09-01, 50-09-06, 50-09-09, 50-09-21, and subsection 1 of section 50-11-00.1 of the North Dakota Century Code, relating to aid to dependent children and foster care for children; and to repeal sections 50-09-10, 50-09-10.1, 50-09-11, 50-09-12, and 50-09-19 of the North Dakota Century Code, relating to aid to dependent children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06-05.1 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adoptive family, and whose adoptive family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of such child.

SECTION 2. AMENDMENT. Section 50-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Applicant" shall mean a person or agency having the custody of a dependent child making application for aid for such child under the provisions of this chapter.
2. "Assistance" shall mean means money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers or fathers and their infants.
3. 2. "County agency" shall mean means the county social service board in each of the counties of the state.
4. "Dependent child" shall mean any needy child:
 - a. Who is living in the home of a relative by birth, marriage, or adoption, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is:
 - (1) Under the age of eighteen years,
 - (2) Under the age of twenty-one years and physically or mentally incapacitated, or
 - (3) Under the age of twenty-one years and a student regularly attending and making satisfactory progress in pursuance of a course of study of academic or vocational training designed to fit him for gainful employment.
 - b. Under the age of twenty-one years, who is living in a licensed foster home or in a licensed child-caring or child-placing institution:
 - (1) Who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent,
 - (2) Who is abandoned by his parent, guardian, or custodian,
 - (3) Whose parent, guardian, or custodian is unable, neglects, or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals, or well-being, or
 - (4) Who is in need of special care as provided by a private agency for which his parent, guardian, or custodian is unable, neglects, or refuses to provide.

- c- Under the age of twenty-one years, who is living in an adoptive home and would in all probability go without adoption except for acceptance by the adoptive family, and whose adoptive family does not have the economic ability and resources as established by guidelines and rules of the state agency to take care of the special needs of such child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of such child, in which case the state agency may make payments to the adoptive parents in accordance with the provisions of this chapter and the rules and regulations established thereunder-

Under this chapter no fee shall be paid for the adoptive study or the supervision and evaluation of the placement-

- 5- "Private agency" shall mean a private child-caring or child-placing agency duly licensed under the laws of North Dakota, or a private maternity home providing special care exclusively for unmarried expectant mothers or mothers and their infants, and duly licensed under the laws of North Dakota-
- 3- "Dependent child" means any needy child who is described in a state plan for aid and services to needy families submitted pursuant to title IV-A of the Social Security Act [42 U.S.C. §601, et seq.]. The state agency is authorized to submit a state plan in a form which is consistent with and which meets the requirements for such plans which are or may be imposed by that Act.
- 6- 4- "State agency" means the North Dakota department of human services.

SECTION 3. AMENDMENT. Section 50-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-06. Application for assistance - Assignment of support rights. Application for aid to a dependent child under this chapter shall be made to the county agency in the manner and form prescribed by the state agency. The application shall contain such information as the state agency may require, except that application for aid to a dependent child living in a home maintained and operated or selected by a private agency may be made direct to the state agency, and the action of the state agency in approving and granting assistance in such case or in disapproving and denying assistance shall be final and binding on the county agency. An applicant for assistance under this chapter is deemed to have assigned to the state agency and county agency at the time of application all rights to child support from any other person the applicant may have in his own behalf or in behalf of any other family member for whom application is made. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the applicant is eligible for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 4. A new section to chapter 50-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Application for foster care for children - Assignment of support rights. Application for foster care for children must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require. An application for foster care for children is deemed to create and effect an assignment of all rights to support, which the child may have or come to have, to the state agency and county agency. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the child is eligible for foster care for children.
3. Terminates when the child ceases to receive foster care for children, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 5. AMENDMENT. Section 50-09-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-09. Award of assistance. Upon completion of the investigation of an applicant for assistance under this chapter, the county agency ~~or the private agency~~ shall determine, in accordance with the rules ~~and regulations~~ of the state agency:

1. That the applicant is eligible for assistance under the provisions of this chapter;
2. The amount of assistance the applicant shall receive; and
3. The date upon which such assistance shall begin.

In all cases, a statement of the findings of the county agency ~~or the private agency~~ forthwith shall be transmitted to the state agency.

SECTION 6. AMENDMENT. Section 50-09-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-21. Amount county liable for - Reimbursement by county. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for one-fourth of the amount expended for aid to dependent children in such county, in excess of the amount provided by the federal government for assistance payments to dependent children, except ~~assistance payments for dependent children defined in subdivision b of subsection 4 of section 50-09-01~~ approved and granted foster care for children, for which the county share of payment shall be reimbursed to the state agency by the county liable therefor under chapter 50-02.

SECTION 7. A new section to chapter 50-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authority to adopt rules. The state agency may adopt rules reasonable or necessary to carry out its responsibilities under this chapter.

SECTION 8. AMENDMENT. Subsection 1 of section 50-11-00.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Foster care for children" means the provision of substitute parental child care for those children ~~described in subdivision b of subsection 4 of section 50-09-01~~ who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a foster family home, group home, or residential child care facility.

SECTION 9. REPEAL. Sections 50-09-10, 50-09-10.1, 50-09-11, 50-09-12, and 50-09-19 of the North Dakota Century Code are hereby repealed.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 572

SENATE BILL NO. 2036
(Legislative Council)
(Interim Budget Committee on Human Services)

CHRONICALLY MENTALLY ILL SERVICES

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to development of a plan for a continuum of services for chronically mentally ill individuals; and to amend and reenact section 25-02-04 of the North Dakota Century Code, relating to the qualifications of the superintendent of the North Dakota state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuum of services for chronically mentally ill individuals. The department of human services shall develop a plan for an integrated, multidisciplinary continuum of services for chronically mentally ill individuals. The continuum may consist of an array of service provided by private mental health professionals, private agencies, county social service agencies, human service centers, community-based residential care and treatment facilities, and private and public inpatient psychiatric hospitals. To the extent feasible, access to the continuum must be through human service centers. Within the limits of legislative appropriations, the plan for a continuum may include:

1. Programs, and appropriate related facilities, to provide socialization skills.
2. Programs, and appropriate related facilities, to provide basic living skills.
3. Appropriate residential facilities.
4. Appropriate training, placement, and support to enhance potential for employment.
5. Appropriate delivery and control of necessary medication.

6. Appropriate economic assistance.
7. An inpatient facility with appropriate programs to respond to persons who require hospitalization.

The continuum of care must provide that a person requiring treatment be submitted to the least restrictive available conditions necessary to achieve the purposes of treatment. The department shall ensure appropriate cooperation with county social service agencies and private providers in achieving the continuum of care.

SECTION 2. AMENDMENT. Section 25-02-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-04. Superintendent to possess certain qualifications - Employees. The superintendent of the state hospital shall be a board eligible or board certified psychiatrist. If the superintendent is board eligible, he or she shall accomplish board certification within three years of the date of his or her appointment, or of the effective date of this Act, whichever is later. The superintendent shall appoint with the approval of the executive director of the department of human services an assistant superintendent of administration who shall be under the superintendent's supervision and who shall be a qualified and experienced hospital administrator. The superintendent shall appoint and employ the professional staff and define their qualifications and duties. Every physician on the professional staff must have a license issued by the state board of medical examiners. The assistant superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 573

SENATE BILL NO. 2330
(Senators Stenehjem, Waldera)
(Representatives Kelly, Dalrymple)

MENTAL HEALTH PATIENT RECORDS

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the exchange and transfer of mental health records within the department of human services and agencies under contract with the department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exchange and transfer of patient records. The department shall implement a procedure for the exchange and transfer, among treatment units within the department and treatment units of agencies under contract with the department, of records relating to the examination, custody, care, and treatment of mental health clients receiving services supported by public funds, subject to standards for confidentiality. The department shall adopt, in accordance with chapter 28-32, rules necessary to implement this section.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 574

HOUSE BILL NO. 1465
(Representatives P. DeMers, Kolbo, J. DeMers)
(Senators Richard, J. Meyer)

VENDING ON FEDERAL PROPERTY

AN ACT to create and enact a new section to chapter 50-06.1 of the North Dakota Century Code, relating to the operation of vending facilities on federal property by blind persons; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Division to license blind operators and operate vending facilities - Continuing appropriation of income. The division shall act as the state licensing agency to license the operators of vending facilities on federal property within the state to the extent permitted or required by the Randolph-Sheppard Act [Pub. L. 74-732, 20 U.S.C. 107]. The division may take any action, consistent with the provisions of that Act, for the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting. If there is no blind licensee operating a vending facility on federal property, the division may operate or contract for the operation of a vending facility, provided that all income from such a vending facility is distributed in a manner consistent with the requirements of such Act. There is hereby appropriated on a continuing basis all income from vending facilities which the division operates, or contracts to operate, consistent with the requirements of such Act and the regulations and policies of the United States secretary of education, promulgated thereunder, for the purposes of:

1. Maintenance and replacement of equipment.
2. The purchase of new equipment.
3. Management services.

4. Assuring a fair minimum return to operators of vending facilities.
5. Retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is determined by a majority vote of blind licensees licensed by the division, after the division provides to each such licensee full information on all matters relevant to such proposed program, that income should be used for such purposes.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 575

SENATE BILL NO. 2038
(Legislative Council)
(Interim Budget Committee on Human Services)

COMMUNITY-BASED HUMAN SERVICES

AN ACT to create and enact a new subsection to section 50-06.2-02 of the North Dakota Century Code, relating to the definition of family home care; to amend and reenact subsection 3 of section 50-06.2-01, subsection 5 of section 50-06.2-03, and subsection 3 of section 50-06.2-04 of the North Dakota Century Code, relating to the purposes of the chapter and the powers and duties of the department of human services and county social service boards; and to repeal chapter 50-24.2 of the North Dakota Century Code, relating to family home care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-06.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. To provide a continuum of community-based services adequate to appropriately sustain individuals in their homes and in their communities and to delay or prevent or reduce institutional care by providing alternate, cost effective and quality of life enhancing community-based care, home-based care, or other forms of less intensive care.

SECTION 2. A new subsection to section 50-06.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse, parent, grandparent, adult child, adult sibling, or adult grandchild of an eligible elderly or disabled person.

SECTION 3. AMENDMENT. Subsection 5 of section 50-06.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. From funds otherwise available for payments under chapter 50-24.1 Within the limits of legislative appropriations and at rates determined payable by the state agency, to reimburse county agencies for the provision of the following services as defined in the comprehensive human service plan at rates not to exceed the nonfederal share of the statewide average of payments of intermediate care under chapter 50-24.1 which are provided to persons who, on the basis of functional assessments, are determined eligible for the services in accordance with rules adopted by the state agency:
- a. Homemaker services;
 - b. Chore services;
 - c. Respite care;
 - d. Home health aide services; and
 - e. Case management;
 - f. Family home care;
 - g. Personal attendant care;
 - h. Adult family foster care; and
 - i. Such other services as the state agency determines to be essential in preventing or reducing and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.

SECTION 4. AMENDMENT. Subsection 3 of section 50-06.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. To make available the human services detailed in the comprehensive human service plan which the county agency has included in the approved county plan and to provide such other human services the county agency determines essential in effectuating the purposes of this chapter within the county. To the extent funding is made available under section 50-06.2-03 and chapter 50-24.1, the county plan must include the services enumerated in those provisions. The county agency must make these services available to any individual requesting service and determined eligible on the basis of functional assessment. The individual shall pay for the services in accordance with a fee scale based on family size and income. The county agency may contract with any public or private agency or person approved by the state agency in its provision of those enumerated services.

SECTION 5. REPEAL. Chapter 50-24.2 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 576

HOUSE BILL NO. 1183
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

LONG-TERM CARE OMBUDSMAN DUTIES

AN ACT to amend and reenact subsection 1 of section 50-10.1-03, and sections 50-10.1-05 and 50-10.1-06 of the North Dakota Century Code, relating to the duties of long-term care ombudsmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-10.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Investigate and resolve complaints about administrative actions that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of persons in long-term care facilities or persons who have been discharged from long-term care facilities within nine months of the complaint against the facility.

SECTION 2. AMENDMENT. Section 50-10.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-05. Chapter to be posted - Retaliation prohibited. A copy of this chapter ~~shall~~ must be posted in a conspicuous place in each long-term care facility, along with a statement of the right to file a complaint concerning administrative actions which affect any resident and the address where a complaint may be filed. Each resident, the spouse of each resident having a spouse, and any designated representative of a resident ~~shall~~ must be provided with copies of the posted documents at the time the resident is admitted to the long-term care facility. ~~However, each person who is a resident on July 1, 1983, the spouse of each resident having a spouse, and any designated representative of a resident shall be provided with copies of the posted documents at that time.~~ A long-term care facility, and its agents, may not take or threaten retaliatory action against a resident, employee, or any other person on account of the filing of a complaint by or on behalf of that

resident, or on account of the providing of information to a long-term care ombudsman constituting or relating to a complaint.

SECTION 3. AMENDMENT. Section 50-10.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.1-06. Establishment of reporting system - Recognition of reports by ombudsmen. The department shall establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The department shall submit this information to the appropriate state agency which is responsible for the licensing or certification of the long-term care facility involved and to the appropriate federal agency. Each state agency responsible for licensing or certification of long-term care facilities shall coordinate its activities with the statewide uniform reporting system by submitting to the department in a timely manner all complaints and information it receives on conditions that adversely affect the health, safety, welfare, or personal or civil rights of residents; provided, that the information is not privileged under the law. The ombudsman program may recognize investigative reports conducted by an appropriate agency or organization.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 577

SENATE BILL NO. 2510
(Senators Heinrich, Thane, Stenehjem)
(Representatives Myrdal, J. DeMers)

HEALTH CARE FACILITY RESIDENTS' RIGHTS

AN ACT to create and enact a new section to chapter 50-10.2 of the North Dakota Century Code, relating to enforcement of rights of health care facility residents; and to amend and reenact sections 50-10.2-01, 50-10.2-02, and 50-10.2-03 of the North Dakota Century Code, relating to the rights of residents of health care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-10.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's immediate family.
2. "Department" means the department of human services.
3. "Facility" means a skilled nursing care facility, intermediate care facility, foster care home for adults, boarding home for the aged and infirm, boarding homes, or any combination thereof house, or swing bed hospital approved to furnish long-term care services.
4. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
5. "Remodeling" means any alteration in structure, refurbishing, or repair that would:

- a. Prevent the facility staff from providing customary and required care; or
- b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of workmen.

2- 6. "Resident" means a person residing ~~and receiving personal care from~~ in a facility.

SECTION 2. AMENDMENT. Section 50-10.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.2-02. Residents' rights - Implementation.

1. All facilities shall adopt and make public a statement of the rights and responsibilities of their residents and must treat residents in accordance with provisions of that statement, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or any existing legal guardian of the resident a statement of the resident's rights while living in the facility. Within thirty days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident, and thereafter annually so long as the resident remains in the facility. This The statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct ~~and must be provided to the resident or legal guardian prior to or at the time of admission to the facility.~~ Facilities must treat residents in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:
 - a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
 - b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
 - c. The right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints ~~on one's behalf or on the behalf of other residents~~ the resident to the facility's staff or, the

facility's administrator, to governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt a grievance process and make the process known to each resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident. An individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.

- d. The right to send and receive unopened personal mail, and the right of access to and use of telephones for private conversations.
- e. The right to assured private visits by one's spouse, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.
- f. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. If such a trust is established, then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with a verbal an explanation by the facility to the resident or the person legally responsible for the resident.
- g. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and the charges for those services, including ancillary charges. Residents, or their guardian legal guardians, must be informed at least thirty days prior to any change in the costs or availability of the services. No facility may demand or receive any advance payment or gratuity to assure admission.
- h. The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment unless otherwise indicated by that resident's physician, to be discharged from the facility upon written request, and to be notified by the resident's attending physician of the medical consequences of any such actions.

- i. The right to have privacy in treatment and in caring for personal needs, to use personal belongings, to have security in storing and using personal possessions, and to have confidentiality in the treatment of personal and medical records, and security in storing and using personal possessions. The resident has the right to view, and authorize release of, any personal or medical records.
- j. The right to be treated courteously, fairly, and with the fullest measure of dignity.
- k. The right to be free from mental and physical abuse; and the right to be free from physical and or chemical restraint, except for these restraints in documented emergencies or when necessary to protect the resident from injury to self or to others. In such cases, the restraint must be authorized in writing and documented by a physician for a specified and limited period of time or as necessitated by an emergency. In the case of an emergency, restraint may only be applied by a qualified licensed or registered nurse who shall set forth in writing the circumstances requiring the use of a restraint and in the case of use of a chemical restraint, a physician must be consulted immediately thereafter and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.
- l. The right not to be transferred or discharged only except for:
- (1) Medical reasons;
 - (2) The resident's welfare or that of other residents; or
 - (3) Nonpayment of one's rent or fees.
- The rights in this subdivision do not apply. Residents may be temporarily transferred during times of rebuilding, remodeling, refurbishing, or general renovation of a facility.
- m. The right to receive a thirty-day advance notice of any transfer or discharge, except in the case of an emergency as determined by physician when the resident is being discharged to another facility or the resident's own home, or when the resident is being

- transferred or discharged because of a change in the resident's level of care; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.
- n. The right to refuse to perform services on behalf of the facility, unless agreed to by the resident or legal guardian and established in the plan of care as being therapeutic, as deemed by a physician care.
- o. The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.
- p. The right to have each facility display a notice that the following information is available for public review and make the information available on request:
- (1) A complete copy of every inspection report, deficiency report, and plan of correction the facility received during the previous two years.
 - (2) The facility's grievance process.
 - (3) A copy of the statement of ownership, board membership, and partners.
 - (4) A statement of ownership setting forth any conflict of interest in the operation of the facility.
- q. The right to a pharmacist of the resident's choice irrespective of the type of medication distribution system used by the facility.
- r. The right to not be discriminated against by a facility in the admissions process or in the provision of appropriate care on the basis of the resident's source of payment to the facility. Any applicant for admission to a facility who is denied admission must be given the reason for the denial in writing upon request.
- s. The right of residents and their families to organize, maintain, and participate in resident advisory and family councils.
- t. The right of residents receiving services performed by a provider from outside the facility to be informed, on request, of the identity of the provider.

2. Waiver of any of the rights guaranteed by this chapter may not be made a condition of admission to a facility.
3. Each facility must prepare a written plan and appropriate provide staff training to implement this chapter.
4. The department shall hold open meetings at least once every two years in each region established by the governor's executive order 1978-12 dated October 5, 1978, having a facility, to advise and to facilitate communication and cooperation between facility personnel and the residents in their mutual efforts to improve resident care; and to document concerns and issues needing to be addressed. Appropriate advance notice must be given.
5. The department shall develop and coordinate with the facility licensing and regulatory agencies a relocation plan in the event a facility is decertified or unlicensed.

SECTION 3. AMENDMENT. Section 50-10.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-10.2-03. Rulemaking authority of department. The department of human services may adopt rules in accordance with chapter 28-32, consistent with and necessary for the implementation and enforcement of this chapter through the ombudsman program under chapter 50-10.1.

SECTION 4. A new section to chapter 50-10.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Enforcement - Injunction. Any facility that violates this chapter may be enjoined by a district court. Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in the name of the state. Actions for injunction under this section must be prosecuted in the county where the case arises.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 578

SENATE BILL NO. 2243
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

EARLY CHILDHOOD SERVICES FACILITIES

AN ACT to create and enact a new subsection to section 50-11.1-03 of the North Dakota Century Code, relating to disposition of fees from licenses for early childhood services facilities; to amend and reenact subsection 5 of section 50-11.1-02 of the North Dakota Century Code, relating to definition of the term "early childhood services"; and to repeal section 19 of chapter 526 of the 1985 Session Laws of North Dakota, relating to the licensing of day care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 50-11.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15-45 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15-34.1-03.

- d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
- e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Headstart programs that are federally funded and meet federal headstart standards.
- j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.

SECTION 2. A new subsection to section 50-11.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

All fees collected under subsection 3 must be paid to the county social service board and must be used to defray the cost, to that board, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

SECTION 3. REPEAL. Section 19 of chapter 526 of the 1985 Session Laws of North Dakota is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 579

SENATE BILL NO. 2265
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

MEDICAL ASSISTANCE PROGRAM ELIGIBILITY

AN ACT to amend and reenact section 50-24.1-02 of the North Dakota Century Code, relating to eligibility for the medical assistance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02. Eligibility. Within the limits of legislative appropriations, medical assistance may be paid for any person who either has income and resources insufficient to meet the costs of necessary medical care and services or is eligible for or receiving financial assistance under chapter 50-09 or title XVI of the Social Security Act, as amended, and:

1. Has not at any time before or after making application for medical assistance made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this chapter. For the purposes of making any determination or redetermination of eligibility, the phrase "assignment or transfer" includes, but is not limited to, actions or failures to act which effect a renunciation or disclaimer of any interest which the applicant or recipient might otherwise assert or have asserted, or which serve to reduce the amounts which an applicant or recipient might otherwise claim from a decedent's estate, a trust or similar device, or a person obligated by law to furnish support to the applicant or recipient.
2. Has applied or agrees to apply all proceeds received or receivable by him or his eligible spouse from automobile accident medical benefits coverage and private health care coverage to the costs of medical care for himself and his eligible spouse and children. The department of human

services may require from any applicant or recipient of medical assistance the assignment of any rights accruing under automobile medical benefits coverage or private health care coverage. Any rights or amounts so assigned shall be applied against the cost of medical care paid on behalf of the recipient under this chapter. The assignment is not effective as to any carrier before the receipt of notice of assignment by such carrier.

3. Is eligible under rules and regulations established by the department of human services.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 580

HOUSE BILL NO. 1625
(Hoffner)

MEDICAL ASSISTANCE ELIGIBILITY

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to pre-need funeral plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.3. When pre-need funeral plan not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon, made under a pre-need funeral service contract by an applicant for or recipient of medical assistance.

Approved April 13, 1987
Filed April 14, 1987

CHAPTER 581

SENATE BILL NO. 2037
(Legislative Council)
(Interim Budget Committee on Human Services)

PREAMISSION ASSESSMENT

AN ACT to create and enact a new section to chapter 50-24.3 of the North Dakota Century Code, relating to preadmission assessment of persons entering facilities furnishing skilled or intermediate medical care; to amend and reenact sections 50-24.3-01, 50-24.3-03, and 50-24.3-04 of the North Dakota Century Code, relating to the powers and duties of the department of human services and preadmission assessment of persons entering facilities furnishing skilled or intermediate medical care; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.3-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.3-01. Assessment mechanism - Establishment. The department of human services shall establish a mechanism to assess, prior to admission to a skilled nursing facility, intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the health and social needs of medical assistance recipients and individuals who may become eligible for medical assistance within one hundred eighty days of each person making application for admission to such facilities the facility.

SECTION 2. AMENDMENT. Section 50-24.3-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.3-03. Department of human services - Powers and duties. The department of human services shall have the following powers and duties which it may delegate to any acute care facility which provides discharge planning entity which provides assessment services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services professionals and nursing home personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care, or intermediate care as provided in a facility, or other care which is available in the community.
7. To inform referred individuals of the extent to which home and community-based services are available, and of their opportunity to choose, in consultation with an attending physician and family member, among the appropriate alternatives that may be available.

SECTION 3. AMENDMENT. Section 50-24.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.3-04. Assessment Preadmission assessment of persons. Prior to admission to a skilled nursing facility or an intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the department shall assess or arrange for assessing the needs of all persons receiving medical assistance and, if requested to do so, of all persons who, due to income and resource considerations, reasonably anticipate the necessity to apply for medical assistance within one hundred eighty days of admission to a nursing home applicants for admission, except patients transferred from other nursing homes or patients who, having entered acute care facilities from nursing homes or swing beds, are returning to nursing home care. Any other interested person may be assessed upon payment of a fee based upon a sliding fee scale to be established by the department of human services. The cost for assessing persons must be defrayed by federal, state, and county funds.

SECTION 4. A new section to chapter 50-24.3 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Facility's duties - Preadmission assessment - Alternative care. As a condition for receiving reimbursement from the department of human services for the care of the individual, each skilled nursing facility, intermediate care facility, or hospital swing-bed facility approved to furnish skilled or intermediate care services shall assure that each person requiring an assessment under this chapter receives the assessment prior to admission to the facility.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 1988.

Approved April 9, 1987
Filed April 9, 1987

CHAPTER 582

HOUSE BILL NO. 1448
(Representatives Strinden, Haugland, Kelly)
(Senators Thane, Mushik, Redlin)

NURSING HOME RATES

AN ACT to provide for the setting of rates to be paid for services provided to residents of nursing homes and to provide conditions for the receipt of medical assistance payments by nursing homes; to amend and reenact subsection 18 of section 54-12-01 of the North Dakota Century Code, relating to the duties of the attorney general regarding appointment of hearing officers; and to repeal subsection 21 of section 50-06-05.1 and section 50-24.1-09 of the North Dakota Century Code, relating to the powers and duties of the department of human services regarding administrative hearings and limitation on reimbursement of long-term care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. For the purposes of this Act:

1. "Actual allowable historical operating cost per diem" means the per diem operating costs allowed by the department for the most recent reporting year.
2. "Actual resident day" means a billable, countable day as defined by the department.
3. "Department" means the department of human services.
4. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.
5. "Final rate" means the rate established after any adjustment by the department, including, but not limited to, adjustments resulting from cost report reviews and audits.
6. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.

7. "General and administrative costs" means all allowable costs for administering the facility, including, but not limited to: salaries of administrators, assistant administrators, accounting personnel, data processing personnel, security personnel, and all clerical personnel; board of directors' fees; business office functions and supplies; travel, except as necessary for training programs for dietitians, nursing personnel and direct resident care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit under subsection 6; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.
8. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.
9. "Nursing home" means a facility, not owned or administered by the state government, described in subsection 3 of section 43-34-01.
10. "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.
11. "Payment rate" means the rate determined under section 6 of this Act.
12. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
13. "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not established by any other third party, including the veteran's administration or medicare.
14. "Rate year" means the fiscal year for which a payment rate determined under this Act is effective, from January first to the next December thirty-first.

15. "Real estate" means improvements to real property and attached fixtures used directly for resident care.
16. "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this Act.
17. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and any other person performing functions ordinarily performed by such personnel.

SECTION 2. Authority. The department shall establish, by rule, procedures for determining rates for care of residents of nursing homes which qualify as vendors of medical assistance, and for implementing the provisions of this Act. The procedures must be based on methods and standards which the department finds are adequate to recognize the costs that must be incurred for the care of residents in efficiently and economically operated nursing homes. The department shall identify costs that are recognized for establishing payment rates.

SECTION 3. Federal requirements - Supremacy. If any provision of this Act is determined by the United States government to be in conflict with existing or future requirements of the United States government with respect to federal participation in medical assistance, the federal requirements prevail.

SECTION 4. Payment rates. Payment rates paid to any nursing home receiving medical assistance payments must be those rates established pursuant to this Act and rules adopted under it.

SECTION 5. Requirements. No medical assistance payments may be made to any nursing home unless the nursing home is certified to participate in the medical assistance program under title XIX of the federal Social Security Act and has in effect a provider agreement with the department meeting the requirements of state and federal statutes and rules. No medical assistance payments may be made to any nursing home unless the nursing home complies with all requirements of North Dakota law including, but not limited to, this Act and rules adopted under it that govern participation in the program. This section applies whether the nursing home participates fully in the medical assistance program or is withdrawing from the medical assistance program.

SECTION 6. Rate determination. The department shall determine prospective payment rates for resident care costs. For rate years beginning on or after January 1, 1990, the department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.

The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.

SECTION 7. Nonallowable costs. The following costs may not be recognized as allowable: political contributions; salaries or expenses of a lobbyist, as defined in section 54-05.1-02, for lobbying activities; advertising designed to encourage potential residents to select a particular nursing home; fines and penalties; legal and related expenses for unsuccessful challenges to decisions by governmental agencies; memberships in sports, health, or similar social clubs or organizations; and costs incurred for activities directly related to influencing employees with respect to unionization. The department shall by rule exclude the costs of other items or services not directly related to the provision of resident care.

SECTION 8. Notice of increases to private-paying residents. No increase in nursing home rates for private-paying residents is effective unless the nursing home notifies the resident or person responsible for payment of the increase in writing thirty days before the increase takes effect. A nursing home may adjust its rates without giving the notice required by this section when the purpose of the rate adjustment is to reflect a necessary change in the category of care provided to a resident. If the department fails to set rates at least forty days prior to the beginning of a rate year, the time required for giving notice is decreased by the number of days by which the department was late in setting the rates.

SECTION 9. Interim rates. In setting rates for payment for services furnished by nursing homes prior to January 1, 1990, the department shall operate the ratesetting process as it presently exists, or in any other fashion which may be permitted by law. The department may, in its discretion, prior to July 1, 1988, direct that nursing homes engage in any activity which will be reasonably necessary to permit an orderly transition to the establishment of payment rates under this Act.

SECTION 10. Operating costs after January 1, 1990.

1. For rate years beginning on or after January 1, 1990, the department shall establish procedures for determining per diem reimbursement for operating costs.
2. The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.
3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred

by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

4. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of allowable operating costs for the reporting year that begins July 1, 1987, taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this Act based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. Until the new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the per diem to an imputed occupancy level at or below ninety percent. The department shall establish efficiency incentives as appropriate. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.
5. The department shall establish a composite index or indices by determining the appropriate economic change indicators to be applied to specific operating cost categories or combination of operating cost categories.
6. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the appropriate index established in subsection 5 of this section for the operating cost category plus an efficiency

incentive established pursuant to subsection 4 of this section or the limit for the operating cost category increased by the same index. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

SECTION 11. Adjustment of historical operating costs.

1. For rate years beginning on or after January 1, 1991, the department may allow a one-time adjustment to historical operating costs of a nursing home that has been found by the department to be significantly below care related minimum standards appropriate to the mix of resident needs in that nursing home when it is determined by the department that the nursing home is unable to meet minimum standards through reallocation of nursing home costs and efficiency incentives or allowances. In developing procedures to allow adjustments, the department shall specify the terms and conditions governing any additional payments made to a nursing home as a result of the adjustment. The department shall establish procedures to recover amounts paid under this section, in whole or in part, and to adjust current and future rates, for nursing homes that fail to use the adjustment to satisfy care related minimum standards.
2. If the department learns that unallowable expenditures have been included in the nursing home's historical operating costs, the department shall disallow the expenditures and recover the entire overpayment out of future payments otherwise due to the nursing home under chapter 50-24.1, or otherwise, as the department may determine.

SECTION 12. Avoiding detrimental effect on quality of care. If the department learns that expenditures for direct resident care have been reduced in amounts large enough to indicate a possible detrimental effect on the quality of care, the department shall notify the state health department.

SECTION 13. Exclusion. Until procedures for determining operating cost payment rates according to mix of resident needs are established for nursing homes that exclusively provide residential services for the nongeriatric physically handicapped, such nursing homes may not be included in the calculation of the percentiles of any group. Each of these nursing homes shall receive their actual allowed historical operating cost per diem adjusted by a percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 10 of this Act,

and which the department determines to be relevant to residential services for the nongeriatric physically handicapped.

SECTION 14. General and administrative costs after January 1, 1990. For rate years beginning on or after January 1, 1990, all general and administrative costs must be included in general and administrative costs in total, without direct or indirect allocation to other cost categories. In a nursing home of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central or home office costs representing services of consultants required by law in areas including, but not limited to, dietary, pharmacy, social services, or activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a nursing home according to subsections 1 through 5.

1. Only the salaries, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs may be allocated.
2. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services in the nursing home.
3. The cost in subsection 1 for each consultant must not be allocated to more than one operating cost category in the nursing home. If more than one nursing home is served by a consultant, all nursing homes shall allocate the consultant's cost to the same operating category.
4. Top management personnel must not be considered consultants.
5. The consultant's full-time responsibilities are to provide the services identified in this section.

SECTION 15. Property-related costs after January 1, 1990. For all rate years beginning on or after January 1, 1990:

1. The department shall reimburse nursing home providers that are vendors in the medical assistance program for the use of real estate and depreciable equipment.
2. In developing the method for determining that part of the payment rate for the use of real estate and depreciable equipment, the department shall consider factors designed to:

- a. Simplify the administrative procedures for determining payment rates for property-related costs;
- b. Minimize discretionary or appealable decisions;
- c. Eliminate any incentives to sell nursing homes;
- d. Recognize legitimate costs of preserving and replacing property;
- e. Recognize the existing costs of outstanding indebtedness allowable under the statutes and rules in effect on July 1, 1985; and
- f. Reward efficient management of capital assets.

SECTION 16. Special rates. For nursing homes with a capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the percentile for any group, the department shall establish by rule procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than fifteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up after the first year of operating; the cost settled operating cost per diem may not exceed one hundred ten percent of the sixtieth percentile established for the appropriate group.

SECTION 17. Adjustments and reconsideration procedures.

1. Rate adjustments may be made to correct errors subsequently determined and must also be retroactive to the beginning of the facility's rate year except with respect to rates paid by private-paying residents. Any adjustments that result in a cumulative change of more than twenty-five cents per day from the desk rate will be included in the next subsequent cost report to the extent not corrected by a rate adjustment made pursuant to this subsection.
2. Any requests for reconsideration of the rate must be filed with the department's medical services division for administrative consideration within thirty days of the date of the rate notification.

SECTION 18. Appeals.

1. A nursing home dissatisfied with the final rate established may, upon completion of the reconsideration, appeal. An appeal may be perfected by mailing or delivering the information described in subdivisions a through e of this subsection to the department, at such address as the department may designate, mailed or

delivered on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including the following information:

- a. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;
 - b. A statement of each disputed item and the reason or basis for the dispute;
 - c. A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;
 - d. The authority in statute or rule upon which the appealing party relies for each disputed item; and
 - e. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.
2. Upon the request of the nursing home, the department shall refer the appeal to the attorney general for the appointment of a hearing officer, knowledgeable in ratesetting matters, who is not an employee of the department and who has not been involved in the decision from which the nursing home has appealed.

SECTION 19. Prohibited practices. From and after January 1, 1990, a nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may (1) charge private-paying residents a higher rate for a private room, and (2) charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department of human services. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not

provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this Act is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this Act. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorneys' fees or their equivalent.

2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit in excess of one hundred dollars, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.
5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.
 - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

The collection and use by a nursing home of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the nursing home is utilizing that information for any purpose prohibited by this Act.

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of his fee to the nursing home except as payment for the fair market value of renting or leasing

space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.

7. Refusing, for more than twenty-four hours, to accept a resident returning to his same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.
8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.

SECTION 20. Temporary payments - Correction orders. For a period not to exceed one hundred eighty days from the date of mailing formal notice, the department may continue to make medical assistance payments to a nursing home which is in violation of this Act if extreme hardship to the residents would otherwise result. In these cases, the department shall issue an order requiring the nursing home to correct the violation. The nursing home has twenty days from its receipt of the order to correct the violation. If the violation is not corrected within the twenty-day period, the department may reduce the payment rate to the nursing home by up to twenty percent. The amount of the payment rate reduction must be related to the severity of the violation, and must remain in effect until the violation is corrected. The nursing home may seek reconsideration of or appeal the department's action pursuant to the provisions of sections 17 and 18 of this Act.

SECTION 21. Termination. If a nursing home terminates its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the nursing home to receive continued reimbursement only on a temporary basis until medical assistance residents can be relocated to nursing homes participating in the medical assistance program.

SECTION 22. Exception. In the event that the state is determined by the federal government to be no longer eligible for the federal share of medical assistance payments made to a nursing home under this Act, the department may cease medical assistance payments to that nursing home.

SECTION 23. Reporting requirements.

1. No later than October first of each year, each nursing home which receives medical assistance payments from the department shall:
 - a. Provide the department with a copy of its audited report that meets the reporting standards of the American institute of certified public accountants and includes an audited statement of the rate or rates charged to private-paying residents. The examination by the certified public accountant shall be conducted

- in accordance with generally accepted auditing standards as promulgated and adopted by the American institute of certified public accountants;
- b. Provide the department with a statement of ownership for the facility or a certification that ownership has not changed since the most recent statement given pursuant to this subsection;
 - c. Provide the department with separate, audited financial statements as specified in subdivision a of this subsection for every other facility owned in whole or in part by an individual or entity which has an ownership interest in the facility;
 - d. Upon request, provide the department with separate, audited financial statements as specified in subdivision a of this subsection for every organization with which the facility conducts business and which is owned in whole or in part by an individual or entity which has an ownership interest in the facility;
 - e. Provide the department with copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the nursing facility, or a certification that the content of any such document remains unchanged since the most recent statement given pursuant to this subsection;
 - f. Upon request, provide the department with copies of leases, purchase agreements, and other documents related to the acquisition of equipment, goods, and services which are claimed as allowable costs; and
 - g. Permit access by the department to the certified public accountant's audit workpapers which support the audited financial statements required in subdivisions a, c, and d of this subsection.
2. Documents or information provided to the department pursuant to this Act shall be public. If the requirements of subsection 1 are not met, the reimbursement rate may be reduced to eighty percent of the rate in effect on the first day of the fourth calendar month after the close of the reporting year, and the reduction shall continue until the requirements are met.

SECTION 24. Incomplete or inaccurate reports. The department may reject any annual cost report filed by a nursing home pursuant to this Act if the department determines that the report or the information required in section 23 of this Act has been filed in a form that is incomplete or inaccurate. In the event that a report

is rejected pursuant to this Act, the department may reduce the reimbursement rate to a nursing home to eighty percent of its most recently established rate until the information is completely and accurately filed.

SECTION 25. Extensions. The department may grant a fifteen-day extension of the reporting deadline to a nursing home for good cause. To receive such an extension, a nursing home shall submit a written request by September first. The department will notify the nursing home of the decision by September fifteenth.

SECTION 26. False reports. If a nursing home knowingly supplies inaccurate or false information in a required report that results in an overpayment, the department shall:

1. Immediately adjust the nursing home's payment rate to recover the entire overpayment within the rate year;
2. Terminate the department's agreement with the nursing home;
3. Prosecute under applicable state or federal law; or
4. Use any combination of the foregoing actions.

SECTION 27. Medicare certification. All nursing homes certified as skilled nursing facilities under the medical assistance program shall participate in medicare part A and part B with respect to every skilled bed in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. Medicare review must be conducted at the time of the annual medical assistance review. Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

SECTION 28. Implementation. The department shall seek appropriations to implement this Act during and after the rate year beginning January 1, 1990.

SECTION 29. AMENDMENT. Subsection 18 of section 54-12-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. To appoint, upon request, hearing officers to conduct hearings pursuant to chapter 28-32 in those instances where a ~~claimant~~ nursing home requests that the hearing be conducted by an individual who is not employed by the agency which made the decision from which the ~~claimant~~ nursing home has appealed pursuant to section ~~50-06-05.1~~ 18 of this Act.

* SECTION 30. REPEAL. Subsection 21 of section 50-06-05.1 and section 50-24.1-09 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 14, 1987
Filed April 15, 1987

- * NOTE: Section 50-06-05.1 would have been amended by section 6 of House Bill No. 1033, chapter 766, which was vetoed.

CHAPTER 583

SENATE BILL NO. 2244
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD ABUSE AND NEGLECT PROCEDURES

AN ACT to amend and reenact sections 50-25.1-02, 50-25.1-03, 50-25.1-03.1, 50-25.1-04, 50-25.1-04.1, 50-25.1-05, 50-25.1-05.1, 50-25.1-05.2, 50-25.1-05.3, 50-25.1-06, 50-25.1-07, and 50-25.1-11 of the North Dakota Century Code, relating to child abuse and neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 50-25.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-02. Definitions.

1. "A person responsible for a child's welfare" means the child's parents, guardian, foster parent, an employee of a public or private school or nonresidential child-care facility, an employee of a public or private residential home, institution, or agency, or other person responsible for the child's health and welfare in a residential setting.
2. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's health or welfare, or who is suffering from or was subjected to any act involving that individual in violation of sections 12.1-20-01 through 12.1-20-08.
3. "~~Division~~" "Department" means ~~the children and family services division~~ of the department of human services.
4. "Harm" means negative changes in a child's health which occur when ~~the parent or other~~ a person responsible for his the child's health and welfare:

* NOTE: Section 50-25.1-02 was also amended by section 33 of House Bill No. 1034, chapter 570, and by section 1 of House Bill No. 1254, chapter 584.

- a. Inflicts or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
 - b. Commits, allows to be committed or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
5. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is an employee of a residential child-care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home or any residential facility owned or managed by the state or a political subdivision of the state.
- 5.1. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agencies which they represent or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three members.
6. "Neglected child" means a deprived child as defined in chapter 27-20.
7. "Protective services" includes services performed after an investigation of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
8. "State child protection team" means a multidisciplinary team consisting of the designee of the ~~director of the division~~ department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the office of the attorney general, a representative of the department of public instruction, a representative of the director of institutions, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team

members, at the time of their selection and thereafter, shall be staff members of the public or private agency which they represent, or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three persons.

*** SECTION 2. AMENDMENT.** Section 50-25.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03. Persons required and permitted to report - To whom reported.

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer having knowledge of or reasonable cause to suspect that a child coming before him in his official or professional capacity is abused or neglected shall report the circumstances to the division department or the department's designee.
2. Any person having reasonable cause to suspect that a child is abused or neglected may report such circumstances to the division department or the department's designee.

**** SECTION 3. AMENDMENT.** Section 50-25.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03.1. Photographs and x-rays. Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report and, if indicated by medical consultation, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian. All photographs taken pursuant to this section shall be taken by law enforcement officials upon the request of any person or official required to report under this chapter. ~~All photographs~~ Photographs and x-rays taken, or copies of them, shall be sent to the division department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

***** SECTION 4. AMENDMENT.** Section 50-25.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 50-25.1-03 was also amended by section 34 of House Bill No. 1034, chapter 570.
- ** NOTE: Section 50-25.1-03.1 was also amended by section 35 of House Bill No. 1034, chapter 570.
- *** NOTE: Section 50-25.1-04 was also amended by section 36 of House Bill No. 1034, chapter 570.

50-25.1-04. Method of reporting. All persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made to the division department or the department's designee. Oral reports shall be followed by written reports within forty-eight hours if so requested by the director of the division or his department or the department's designee. Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made under this chapter.

*** SECTION 5. AMENDMENT.** Section 50-25.1-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04.1. State child protection team - How created - Duties. The director of the division department shall name the members of the state child protection team. The members shall be appointed for three-year staggered terms. The member who represents the division department shall serve as chairperson and shall be responsible for the transmittal of all team reports made pursuant to this chapter. The chairperson shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02, 50-25.1-04, and 50-25.1-05.1. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse or neglect it deems appropriate. All reports or recommendations issued shall be subject to the provisions of section 50-25.1-11, except that the team shall make available information reflecting the disposition of reports of institutional child abuse or neglect, where the identity of persons reporting, and of the children and parents of children involved, is protected.

**** SECTION 6. AMENDMENT.** Section 50-25.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The director of the division department shall forthwith investigate, or cause to be investigated, any report of child abuse or neglect made directly to the director department, including the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.

SECTION 7. AMENDMENT. Section 50-25.1-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.1. Determination of probable cause. Upon completion of the investigation of the initial report of child abuse or neglect, a determination shall be made that there does or does not exist probable cause to believe that child abuse or neglect is indicated.

1. This determination shall be the responsibility of:

* NOTE: Section 50-25.1-04.1 was also amended by section 37 of House Bill No. 1034, chapter 570.

** NOTE: Section 50-25.1-05 was also amended by section 38 of House Bill No. 1034, chapter 570.

- a. The state child protection team in all cases of alleged institutional child abuse or neglect; and
 - b. In all other cases of alleged abuse or neglect, by the director of the division or his department or the department's designee.
2. Probable cause to believe that child abuse or neglect is indicated may not be determined where the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception shall not preclude a court from ordering that medical services be provided to the child where his the child's life or safety requires it.

* SECTION 8. AMENDMENT. Section 50-25.1-05.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.2. Report to the court.

1. The state child protection team, upon a determination that institutional child abuse or neglect is indicated, shall promptly make written report to the juvenile court having jurisdiction in the matter. When the subject of the report is a state-operated institution, the state child protection team shall promptly notify the governor that such report has been made to the juvenile court.
2. In all other cases, upon a determination that probable cause exists to believe that child abuse or neglect is indicated, the director of the division or a designee of the director department or the department's designee shall promptly make written report to the juvenile court having jurisdiction in the matter.

** SECTION 9. AMENDMENT. Section 50-25.1-05.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare. Upon determination by the division or its department or the department's designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the division department may refer the report to an appropriate law enforcement agency for investigation and disposition.

*** SECTION 10. AMENDMENT. Section 50-25.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-06. Protective and other services to be provided. The division department and the appropriate county social service board

- * NOTE: Section 50-25.1-05.2 was also amended by section 39 of House Bill No. 1034, chapter 570.
- ** NOTE: Section 50-25.1-05.3 was also amended by section 40 of House Bill No. 1034, chapter 570.
- *** NOTE: Section 50-25.1-06 was also amended by section 41 of House Bill No. 1034, chapter 570.

shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being, and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children.

* SECTION 11. AMENDMENT. Section 50-25.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-07. Protective custody. Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian, or other person having responsibility for the care of the child that he the physician suspects has been abused or neglected, may keep the child in the custody of the hospital or medical facility for not to exceed ninety-six hours and must immediately notify the juvenile court and the division department in order that child-protective proceedings may be instituted.

** SECTION 12. AMENDMENT. Section 50-25.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. All reports made under this chapter, as well as any other information obtained, are confidential and shall be made available to:

1. A physician who has before him a child whom he reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before him a child whom he reasonably suspects may have been abused or neglected and the person requires the information in order to determine whether to place such child in protective custody.
3. Authorized staff of the division department, appropriate county social service boards, and appropriate state and local child protection team members.
4. Any person who is the subject of a report; provided, however, that the identity of persons reporting under this chapter is protected.
5. Public officials and their authorized agents who require such information in connection with the discharge of their official duties.
6. A court whenever it determines that the information is necessary for the determination of an issue before the court.

* NOTE: Section 50-25.1-07 was also amended by section 42 of House Bill No. 1034, chapter 570.

** NOTE: Section 50-25.1-11 was also amended by section 43 of House Bill No. 1034, chapter 570.

7. A person engaged in a bona fide research purpose; provided, however, that no information identifying the subjects of a report is made available to the researcher unless the information is absolutely essential to the research purpose and the ~~director of the division~~ department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. Parents or a legally appointed guardian of a child who is suspected to be abused or neglected, provided, however, that subsection 4 governs the availability of information to a parent or guardian who is also the subject of a report.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 584

HOUSE BILL NO. 1254
(Ulmer)

LOCAL CHILD PROTECTION TEAM COORDINATION

AN ACT to amend and reenact subsection 5.1 of section 50-25.1-02 of the North Dakota Century Code, relating to the definition of a local child protection team.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 5.1 of section 50-25.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 5.1. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, shall be staff members of the public or private agencies which they represent or shall serve without remuneration. In no event shall an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor shall the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.

Approved March 27, 1987
Filed March 30, 1987

- * NOTE: Section 50-25.1-02 was also amended by section 33 of House Bill No. 1034, chapter 570, and by section 1 of Senate Bill No. 2244, chapter 583.

CHAPTER 585

SENATE BILL NO. 2314
(Heinrich)

FALSE CHILD ABUSE REPORTS

AN ACT to amend and reenact section 50-25.1-13 of the North Dakota Century Code, relating to false reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-13 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-13. Penalty for failure to report - False reports. Any person required by this chapter to report a case of known or suspected child neglect or abuse who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information which causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 586

HOUSE BILL NO. 1212
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

COUNCIL ON HUMAN RESOURCES

AN ACT to amend and reenact section 50-26-04 of the North Dakota Century Code, relating to the governor's council on human resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-26-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-04. Executive committee - Powers - Employment of executive director. The executive committee of the governor's council on human resources shall consist of the respective chairman and vice chairman of the committees which constitute the council. They shall select a chairman from their membership and shall meet at such times and at such places as the chairman may direct. Members of the executive committee shall receive the same mileage and expenses for performance of their official duties as is provided in section 50-26-03. It shall be the duty of the executive committee to determine the number of meetings each committee shall hold, the areas in which they shall devote their time, and generally, to supervise all functions of any committee. The executive committee shall coordinate all functions of the council with other state departments, agencies, and other organizations and shall assure that the council cooperate with such departments, agencies, and other organizations wherever possible. The executive committee of the governor's council shall, with the approval of the executive director of the department of human services, appoint a full-time director of the council on human resources whose duty it shall be to assist the committees in any manner authorized by the executive committee of the council. The executive committee of the council may authorize the council director to employ such clerical help as they deem necessary. The compensation of the director and clerical help shall be set by the executive director of the department of human services within appropriations by the legislative assembly. A special operating fund for the governor's council on human resources shall be maintained within the state treasury. All expenditures from such fund shall be within the limits of legislative

appropriations and shall be made upon vouchers, signed and approved by the executive director of the department of human services or the executive director's designee. Upon approval of such vouchers by the office of the budget, warrant-checks shall be prepared by the office of management and budget. All moneys received as gifts, donations, or bequests and all federal moneys received shall be deposited in the special operating fund. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the governor's council on human resources general fund appropriation to such special operating fund whenever its balance falls so low as to require supplementation. The executive committee is authorized on behalf of the council to accept any federal funds and any other gifts and money from any source that may be offered to them.

Approved March 12, 1987
Filed March 16, 1987

SALES AND EXCHANGES

CHAPTER 587

HOUSE BILL NO. 1234
(Committee on Industry, Business and Labor)
(At the request of the Attorney General)

TRANSIENT MERCHANT LICENSING

AN ACT to amend and reenact sections 51-04-01, 51-04-03, 51-04-08, and 51-04-09 of the North Dakota Century Code, relating to the definition of transient merchant, licensing of transient merchants by the attorney general, certain excepted sales, and regulation of transient merchants by a city or other municipality.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Merchandise" shall not include any livestock or agricultural product.
2. "Transient merchant" includes any person, individual, copartnership, or corporation, either as principal or agent, who engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling, or soliciting orders for future delivery of goods, wares, merchandise, personal property, and personal services including, but not limited to, spraying, trimming, or pruning of trees and shrubs of all species, painting or repairing buildings or structures, ~~and~~ pest or rodent control, and taking photographs for present or future delivery, who does not intend to become and does not become a permanent merchant of such place.

SECTION 2. AMENDMENT. Section 51-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-03. License fee - Bond or cash surety - License issuance. An applicant for a transient merchant's license shall pay to the attorney general a license fee of ~~five~~ two hundred dollars to cover the cost of licensing and shall give a surety bond, or the deposit of cash in lieu thereof, which shall be not less than one thousand dollars nor more than fifty thousand dollars, the surety on which shall be a surety company authorized to transact business in the state of North Dakota. The contents and surety therein shall be subject to the approval of the attorney general, and be conditioned that the applicant will in all things conform to the laws relating to transient merchants and further conditioned upon full compliance with all material oral or written statements and representations made by the applicant, his agents, representatives, or auctioneers with reference to merchandise sold or offered for sale, and on faithful performance under all warranties made with reference thereto. The bond shall not be revocable nor terminate prior to passage of two years' time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled has been given to the attorney general.

No license shall be valid for more than one person unless he shall be a bona fide member of a copartnership. Licenses issued by the attorney general shall be valid in all counties of the state and shall expire after one year from the dates of their issuance.

No sale under the purview of this chapter shall be conducted in the name of any person other than the bona fide owner of the goods, wares, and merchandise.

The files and records of the attorney general pertaining to transient merchants shall be kept in convenient form and open for public inspection.

SECTION 3. AMENDMENT. Section 51-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-08. Certain excepted sales. The provisions of this chapter shall ~~do not~~ apply to ~~sales~~ the following:

1. Sales made to dealers by commercial travelers or selling agents in the usual course of business.
2. Sales made by persons soliciting orders of goods, wares, merchandise, or personal property for future delivery, and not from a stock or supply carried by the solicitor or otherwise available for immediate delivery to the purchaser, in which the solicitor does not demand or accept payment of any money or deposit in advance or on delivery without first providing the purchaser with the privilege of examination of the goods, wares, merchandise, or personal property.
3. Sales made by a person who has a sales or use tax permit in accordance with chapter 57-39.2 or 57-40.2, pays

contributions to job service North Dakota for unemployment compensation in accordance with chapter 52-04, and who has reported to the workmen's compensation bureau in accordance with chapter 65-04.

4. Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of such premises.

SECTION 4. AMENDMENT. Section 51-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-09. Regulation by city or other municipality. Nothing in this chapter shall be construed as prohibiting, or in any way limiting or interfering with, the right of any city or other municipal corporation or governmental subdivision of the state, to regulate or license the carrying on within such municipality the business of a transient merchant in any case where authority has been, or shall hereafter be, conferred upon it so to do, but the requirements of this chapter shall be in addition thereto. The governing body of a city or other municipal corporation or governmental subdivision, by resolution, ordinance, or order, may require transient merchants licensed under this chapter and making or intending to make sales within the city limits to comply with any reasonable regulations, in addition to this chapter, as that body may deem necessary for their local control and may require the payment by every such merchant of a per diem license fee not exceeding twenty-five dollars. Every such merchant making sales or offering to do so without complying with the regulations applicable to transient merchants shall be subject to the penalty provided as if no ~~county~~ state license had been issued by the attorney general.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 588

HOUSE BILL NO. 1223
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

AUCTIONEER'S AND CLERK'S LICENSES

AN ACT to create and enact sections 51-05.1-01.1 and 51-05.1-01.2 of the North Dakota Century Code, relating to auctioneer's and clerk's licenses; to amend and reenact sections 15-20.4-02, 51-05.1-01, 51-05.1-02, and 51-05.1-06 of the North Dakota Century Code, relating to exemptions from standards for postsecondary educational institutions, and auctioneer's and clerk's licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.4-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-20.4-02. Exemptions. The following education and educational institutions are exempted from the provisions of this chapter:

1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
4. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided such the education is not advertised or promoted as leading toward educational credentials.
5. Postsecondary educational institutions established, operated, and governed by this state or its political subdivisions, as determined by the board and any

educational consortium that includes one or more of such
the institutions.

6. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as such the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.
7. Schools of barbering regulated under chapter 43-04.
8. Schools of cosmetology regulated under chapter 43-11.
9. Schools of nursing regulated under chapter 43-12.1.
10. Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.1.
11. Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.

SECTION 2. AMENDMENT. Section 51-05.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-01. Auctioneer's license - Clerk's license - Fees - Bonds. No person shall conduct a sale in this state as an auctioneer or clerk the same until he has filed with the public service commission an application for an annual auctioneer's or clerk's license. The original applications shall be in writing, verified, and filed showing the name, residence, and post-office address of the applicant. Applications for renewals of said annual licenses shall be on such forms as may be designated by the commission. The fee for the annual licenses or renewals thereof is twenty-five dollars which shall accompany the applications. The names and license numbers shall appear on all advertising of sales conducted by such auctioneer and clerk.

At the time of filing the applications the auctioneer and clerk shall file with the public service commission a surety bond issued by an insurer authorized to transact business in North Dakota. The bond shall be in the amount of three thousand dollars for an auctioneer and ten thousand dollars for a clerk with the state of North Dakota as obligee for the use and benefit of any person who might be injured by said licensee's improper conduct of such auction sale. The applications for license and bond must be filed at least ten days prior to the date such applicant is to conduct or clerk his first auction sale.

Nonresident auctioneers and clerks upon complying with the foregoing requirements may conduct sales within the state and shall be subject to the same requirements of law as is a resident auctioneer or clerk.

Nothing in this section shall require an executor or an administrator of an estate, any sheriff or other person selling property pursuant to execution or other court order, or any federal, state, or other public official to be licensed in order to conduct such sale in connection with their official duties, nor shall any federally insured financial institution be required to be bonded as provided herein in order to conduct a sale in this state as a clerk, but shall otherwise comply with all other provisions of this chapter, nor shall the provisions of this chapter apply to the selling at auction of purebred or registered livestock.

Auctioneering or clerking without a license prohibited. No person may conduct a sale as an auctioneer or clerk unless licensed by the public service commission.

SECTION 3. Section 51-05.1-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds. Application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is twenty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk.

When filing an application an auctioneer or clerk must file a corporate surety bond of three thousand dollars for an auctioneer and ten thousand dollars for a clerk with the state of North Dakota as obligee for the benefit of any person injured by the licensee's improper conduct.

SECTION 4. Section 51-05.1-01.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-05.1-01.2. Exemptions. A license under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section must comply with all other provisions of this chapter.

SECTION 5. AMENDMENT. Section 51-05.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-02. License standards.

1. Licenses shall be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk in such manner as to safeguard the interest of the public and whose license has not been revoked in this or any other state within two years prior to the date of application.
2. In addition to the requirements established for subsection 1, an An applicant for a license must be at least eighteen years of age and shall be a citizen of the United States. Every applicant for a license as an auctioneer shall either:
 - a. Have been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of this application; or
 - b. Furnish a certificate that he has attended and passed proof of satisfactory completion of an approved course of study relating to auctioneers.

SECTION 6. AMENDMENT. Section 51-05.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-06. License list. The public service commission shall compile annually, ~~on or before~~ by April first, a list of the names and addresses of all licensees those licensed by the commission under the provisions of this chapter. ~~One each of such lists~~ The list shall be mailed to the clerk of the district court in each county of the state and shall be held by said the clerk of court as a public record. ~~Such lists~~ The commission shall also be mailed by the commission mail the list to any person in this state upon request, and to all licensees without charge requesting it.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 589

SENATE BILL NO. 2288
(Senators Wright, Langley)
(Representatives Dotzenrod, Haugland)

FRANCHISE TERMINATION

AN ACT to amend and reenact sections 51-07-01, 51-07-01.1, and 51-07-03 of the North Dakota Century Code, relating to sales and exchanges between wholesalers, manufacturers, distributors, and retailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-01. Retail implement or car dealer may recover price of articles upon discontinuance of contract by wholesaler or retail dealer. Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements, or in the business of selling and retailing automobiles or trucks, or repair parts for automobiles or trucks, enters into a written contract whereby such retailer agrees to maintain a stock of parts or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, or repair parts, or automobiles, trucks, or repair parts, and either such wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor, shall pay to such retailer unless the retailer should desire to keep such merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, automobiles, and trucks including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from such wholesaler, manufacturer, or distributor, and held by such retailer on the date of the cancellation or discontinuance of such contract or thereafter received by such retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts back to the

wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of such farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges which have been paid by the retailer and eighty-five percent of the current net prices on repair parts, plus freight charges which have been paid by the retailer, plus five percent of the current net prices for handling and loading costs on repair parts only, the title to such farm implements, farm machinery, attachments, automobiles, trucks, or repair parts, shall pass to the manufacturer, wholesaler, or distributor making such payment, and such manufacturer, wholesaler, or distributor, shall be entitled to the possession of such farm implements, machinery, attachments, automobiles, trucks, or repair parts. All payments required to be made under this section must be made within thirty days after the final settlement between the retailer and the wholesaler, manufacturer, or distributor.

The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of farm implements, machinery, attachments, automobiles, trucks, and repair parts so that the retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, machinery, attachments, automobiles, trucks, and repair parts not affected by the contract remedy.

The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after ~~July 1, 1971~~ June 30, 1987. Any contract in force and effect on July 1, ~~1971~~ 1987, which by its own terms will terminate on a date subsequent thereto ~~shall be~~ is governed by the law as it existed ~~prior to the 1971 amendment~~ before July 1, 1987.

SECTION 2. AMENDMENT. Section 51-07-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-01.1. Termination of franchises to be done in good faith - Definition of good cause.

1. Any manufacturer, wholesaler, or distributor of farm implements, machinery, and repair parts therefor, or of automobiles, trucks, and repair parts therefor, who enters into a contract with any person, firm, or corporation

engaged in the business of selling and retailing farm implements and repair parts for farm implements, or in the business of selling and retailing automobiles or trucks or repair parts for automobiles or trucks whereby such retailer agrees to maintain a stock of parts or complete or whole machines or attachments, automobiles, or trucks, shall not terminate, cancel, or fail to renew any such contract with the person, firm, or corporation without good cause.

2. For the purpose of this section, good cause for terminating, canceling, or failing to renew a contract shall be limited to failure by the person, firm, or corporation in the business of selling and retailing to comply with those requirements imposed by the written contract between the parties. Further, the determination by the manufacturer, wholesaler, or distributor of good cause for such termination, cancellation, or failure to renew must be made in good faith.

In any action against a manufacturer, wholesaler, or distributor for violation of this section, the manufacturer, wholesaler, or distributor must establish that the termination, cancellation, or failure to renew was made in good faith for good cause as that term is defined in this section. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, it shall be liable for all special and general damages sustained by the plaintiff, including, but not limited to, the costs of the litigation and reasonable attorneys' fees for prosecuting the action, and the plaintiff, where appropriate, shall be entitled to injunctive relief. The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor. The provisions of this section shall apply to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered into, amended, or renewed after ~~July 1, 1975~~ June 30, 1987. Any contract in force and effect on July 1, ~~1975~~ 1987, which by its terms will terminate on a date subsequent thereto ~~shall be~~ is governed by the law as it existed ~~prior to~~ before July 1, ~~1975~~ 1987.

SECTION 3. AMENDMENT. Section 51-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-03. Failure to pay sum specified on cancellation of contract - Liability. In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery, and farm implements, or of automobiles, trucks, and repair parts therefor, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as is required by section

51-07-01, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements or automobiles or trucks, or repair parts therefor, to any retailer of such products, who may have a retail sales contract dated after July 1, 1963 June 30, 1987, or a contract with no expiration date or a continuing contract in force or effect on July 1, 1963 1987, with such manufacturer, wholesaler, or distributor, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for one hundred percent of the net cost of such farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges which have been paid by the retailer and eighty-five percent of the current net price of repair parts, plus five percent for handling and loading plus freight charges which have been paid by the retailer. The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 590

SENATE BILL NO. 2101
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM STATE ANTITRUST ACT

AN ACT to adopt the Uniform State Antitrust Act, relating to prohibitions against restraint of trade; to repeal chapter 51-08 of the North Dakota Century Code, relating to the prohibition against certain business pools and trusts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Person" means an individual, corporation, business trust, partnership, association, or any other legal entity.
2. "Relevant market" means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.

SECTION 2. Contract, combination, or conspiracy to restrain or monopolize trade. A contract, combination, or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.

SECTION 3. Establishment, maintenance, or use of monopoly. The establishment, maintenance, or use of a monopoly, or an attempt to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding competition or controlling, fixing, or maintaining prices, is unlawful.

SECTION 4. Exclusions.

1. Labor of a human being is not a commodity or an article of commerce.
2. Nothing in this Act forbids the existence and operation of any labor, agricultural, or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects.

SECTION 5. Judicial jurisdiction. An action for violation of this Act must be brought in district court.

SECTION 6. Official investigation.

1. If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this Act, the attorney general may serve upon the person, before bringing any action in the district court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand must:
 - a. Be served upon the person in the manner required for service of process in this state;
 - b. Describe the nature of the conduct constituting the violation under investigation;
 - c. Describe the document or object with sufficient definiteness to permit it to be fairly identified;
 - d. Contain a copy of the written interrogatories;
 - e. Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that a reasonable opportunity will be afforded for examination and notation of corrections upon any transcript of an oral examination, that a copy of one's own transcript can be obtained upon payment of reasonable charges, and that objections to or reasons for not complying with the demand may be filed with the attorney general at or before the designated time;
 - f. Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and
 - g. Contain a copy of subsection 2.
2. If a person objects to or otherwise fails to comply with the written demand served upon that person under subsection 1, the attorney general may file in the district court of the county in which the person resides or in which the person maintains a principal place of business within this state a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition must be served upon the person, who may appear in opposition to the petition. If the court

finds that the demand is proper, there is reasonable cause to believe there has been a violation of this Act, and the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

3. Any procedure, testimony taken, or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this Act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.
4. The investigatory authority provided by this section may be invoked by the attorney general only after a district court has reviewed the information gathered by the attorney general and has determined that there is reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to a possible violation of this Act. The submission of the information by the attorney general to the district court shall be made ex parte and shall be kept confidential until such time as the matter may be the subject of an action filed pursuant to section 8 of this Act.

SECTION 7. Civil penalty and injunctive enforcement by state. The attorney general, or a state's attorney with the permission or at the request of the attorney general, may bring an action for appropriate injunctive relief and civil penalties in the name of the state for a violation of this Act. The trier of fact may assess for the benefit of the state a civil penalty of not more than fifty thousand dollars for each violation of this Act.

SECTION 8. Damages and injunctive relief.

1. The state, a political subdivision, or any public agency threatened with injury or injured in its business or property by a violation of this Act may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by the court, taxable costs and reasonable attorney's fees.
2. A person threatened with injury or injured in that person's business or property by a violation of this Act may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by

the court, taxable costs and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the damages sustained.

SECTION 9. Judgment in favor of state as prima facie evidence. A final judgment or decree determining that a person has violated this Act in an action brought by the state under section 7 or under subsection 1 of section 8, other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against that person in any other action against that person under section 8 as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto. This section does not affect the application of collateral estoppel or issue preclusion.

SECTION 10. Limitation of actions.

1. An action under section 7 to recover a civil penalty is barred if it is not commenced within four years after the claim for relief accrues.
2. An action under section 8 to recover damages is barred if it is not commenced within four years after the claim for relief accrues, or within one year after the conclusion of any timely action brought by the state under section 7 or 8 based in whole or in part on any matter complained of in the action for damages, whichever is later.

SECTION 11. Remedies cumulative. The remedies provided in this Act are cumulative.

SECTION 12. Rights, privileges, and immunities. Nothing in this Act shall be construed so as to abrogate an individual's constitutionally guaranteed rights, privileges, and immunities.

SECTION 13. REPEAL. Chapter 51-08 of the North Dakota Century Code is hereby repealed.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 591

SENATE BILL NO. 2381
(Schoenwald)

RETAIL INSTALLMENT CONTRACT PREPAYMENT

AN ACT to amend and reenact section 51-13-05 of the North Dakota Century Code, relating to prepayment of retail installment contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-13-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-05. Prepayment of retail installment contract -- ~~Application of Rule of 78's.~~

1. At any time before maturity, a buyer may pay in full the remaining principal due on a retail installment contract and is entitled to a refund of finance charges as follows:
 - a. ~~For a retail installment contract where the amount financed is not more than ten thousand dollars, the refund must, after deducting an acquisition cost of not more than fifteen dollars, be at least as great a proportion of the finance charge as the sum of the periodic time balances after the month in which the prepayment is made bears to the sum of all the periodic time balances under the scheduled installments in the original retail installment contract.~~
 - b- ~~For a retail installment contract where the amount financed is greater than ten thousand dollars, the The refund must be at least the finance charge paid in excess of that computed under the actuarial method, using the annual percentage rate disclosed under federal law to the nearest one-fourth of one percent.~~
 - b. For a retail installment contract in which the amount financed is not more than ten thousand dollars, an

acquisition cost of at most fifteen dollars may be deducted from the refund.

- c. A For all retail installment contracts, a refund is not required if it is less than one dollar.
2. Notwithstanding section 51-13-06.2, this section applies to retail installment contracts for agricultural purposes and to retail installment contracts for more than twenty-five thousand dollars.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 592

SENATE BILL NO. 2483
(Nelson)

ILLEGAL SALES SCHEMES

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to pyramid promotional schemes and referral sales schemes; to repeal chapter 51-16 of the North Dakota Century Code, relating to multilevel distributorships and chain sales schemes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment.
2. "Consideration" means the payment of cash or the purchase of goods, services, or intangible property but does not include:
 - a. The purchase of goods or services furnished at cost to be used in making sales and not for resale; or
 - b. Time and effort spent in pursuit of sales or recruiting activities.
3. "Pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services, or intangible property

by the participant or other persons introduced into the plan or operation.

Pyramid promotional schemes prohibited - Defenses excluded.

1. No person shall establish, operate, advertise, or promote a pyramid promotional scheme.
2. It is not a defense to a criminal or civil prosecution under this section that:
 - a. The plan contains a limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation; or
 - b. A participant, on giving consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

Referral selling prohibited. No seller or lessor may give or offer a rebate, discount, or anything of value to a buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to the sale or lease.

Penalty - Civil remedies. Any person, including the officers and directors of any company, violating any of the provisions of this chapter is:

1. Guilty of a class A misdemeanor, but a person who has been previously convicted of a class A misdemeanor under this chapter may be charged with and convicted of a class C felony for any violation which occurs after the previous conviction;
2. Deemed to have committed an unlawful practice in violation of section 51-15-02 and subject to all provisions, procedures, and penalties of chapter 51-15; and
3. Notwithstanding any agreement to the contrary, subject to the right of any purchaser in a pyramid promotional scheme or referral selling scheme to declare the sale or contract void and also subject to an action in a court of competent jurisdiction by any purchaser to recover three times the damages sustained by the purchaser in participating in the scheme, plus reasonable attorney's fees and costs.

Scope of remedies.

1. The rights and remedies that this chapter grants to purchasers in pyramid promotional schemes and referral selling schemes are independent of and supplemental to any other right or remedy available to them in law or equity, and nothing contained herein may be construed to diminish or to abrogate any such right or remedy.
2. The provisions of this chapter are in addition to all other causes of action, remedies, and penalties available to the state or any of its governmental agencies.

SECTION 2. REPEAL. Chapter 51-16 of the North Dakota Century Code is hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 593

SENATE BILL NO. 2403
(Senator Todd)
(Representative Whalen)

FRANCHISE DISCONTINUANCE

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to allowing retail dealers to return merchandise upon discontinuance of a franchise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context requires otherwise:

1. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's merchandise in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of merchandise and, if the dealer is to perform service, an inventory of parts for that merchandise.
2. "Dealer" means a person, partnership, corporation, or other business entity which sells at retail and services new merchandise and is not engaged in the business of home solicitation sales.
3. "Distributor" means any manufacturer, wholesaler, or distributor of merchandise who has a contractual arrangement with a dealer for such merchandise.
4. "Merchandise" includes all new products of inventory intended for resale or retail sale by franchised dealers.

Dealers may recover value of merchandise or parts from distributor in certain cases.

1. Whenever:

- a. A distributor cancels or discontinues a contractual arrangement; or
- b. A dealer cancels or discontinues a contractual arrangement because the distributor entered into a contractual arrangement with another dealer to sell in the same geographical area for which the first dealer had an exclusive dealership,

the dealer may recover from the distributor the net cost to him of all new and unused merchandise, and parts for such merchandise, held by him at the time of cancellation or discontinuance of the contractual arrangement. The dealer may enforce the right given under this section by civil action commenced in district court in the county where the dealer has his principal place of business in North Dakota.

2. The provisions of this section are supplemental to any contractual rights which the dealer may have with respect to reimbursement for merchandise and parts inventory held by him at cancellation or discontinuance of a contractual arrangement. The dealer may elect to pursue his rights under the contractual arrangement and under this section, but his total recovery may not exceed the net cost of the merchandise and parts, plus freight costs for return of the merchandise and parts, remaining in his hands at the time of cancellation or discontinuance, plus legal costs awarded by the court.

Exception. The provisions of this chapter do not apply to chapters 51-07, 51-19, 51-20, and 51-20.1.

Approved April 1, 1987
Filed April 2, 1987

SOCIAL SECURITY

CHAPTER 594

SENATE BILL NO. 2107
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

JOB SERVICE LAND SALE OR EXCHANGE

AN ACT authorizing the state of North Dakota acting by job service North Dakota to sell and convey or to exchange Lot 1, Block 11, of the original town, now City of Mandan, Morton County, North Dakota; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. The state of North Dakota acting by job service North Dakota is hereby authorized to sell and convey or to exchange Lot 1, Block 11, of the original town, now City of Mandan, Morton County, North Dakota.

SECTION 2. Job service North Dakota may cause the above described real property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. Proceeds from the sale must be used as authorized and directed by law.

SECTION 3. Notwithstanding the provisions of sections 54-01-05.1 and 54-01-05.2, job service North Dakota may cause the property described in section 1 to be exchanged for real property of not less than equal value situated in Mandan, North Dakota. The real property received in exchange must be acceptable to job service North Dakota and to the United States department of labor. Any real property received in exchange must be appraised as provided by law in the case of sale or exchange of real property owned by the state. Any conveyance of real property made by exchange under this section may be made as provided by law in the case of sale or exchange of real property owned by the state without the complying with any statute requiring the giving of notice of exchange or competitive bidding.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 595

HOUSE BILL NO. 1359
(Representatives Koland, Kloubec)
(Senators Olson, Reiten)

UNEMPLOYMENT COMPENSATION AND CONTRIBUTIONS

AN ACT to amend and reenact sections 52-04-05, 52-04-06, 52-04-09, subdivision b of subsection 1 of section 52-06-04, and section 52-06-05 of the North Dakota Century Code, relating to unemployment compensation contributions and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-05. Standard rate of contributions - Reduction
Determination of rates.

1. For the calendar year 1979 and each calendar year thereafter, the standard rate of contributions payable by each employer shall be the rate fixed for employers who have a minus balance reserve ratio which is applicable for the given year in the schedule of rates under section 52-04-06 or five and four-tenths percent, whichever is greater. No employer's rate shall be reduced below the standard rate for any calendar year unless and until his account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year, except that an employer who has not been subject to the law for a period of time sufficient to meet this requirement may qualify for a reduced rate if his account has been chargeable with benefits throughout a lesser period of time but in no event less than the twelve-consecutive-calendar-month period, the twenty-four-consecutive-calendar-month period for 1985 and each year thereafter, ending on September thirtieth of the preceding calendar year. Employers who have not been subject to the law for a sufficient period of time to meet the requirements of this subsection shall have their rate determined under subsection 2.

2. For the calendar year 1981 and each year thereafter, an employer who is not eligible for an experience rate computation, as provided in subsection 1 and section 52-04-06, shall pay contribution at a rate equal to the average industry tax rate as determined by the bureau on computation date, provided that the rate shall not be less than one percent. This subsection shall not apply to newly liable employers in industries with an average tax rate exceeding three percent. Newly liable employers in these industries shall pay the standard rate. The computation of the average industry rate shall exclude those employer accounts which are not eligible for the computation of an experience rate solely by reason of insufficient experience. For the calendar year 1985 and each year thereafter, an employer who is not eligible for an experience rate as provided in subsection 1 and section 52-04-06, shall be assigned the average tax rate of all employers as determined by the bureau on the computation date, but in no event shall this rate be less than one percent. This provision shall not apply to employers classified in an industry which the bureau determines had a negative reserve on the computation date. Newly liable employers in these industries shall be assigned the standard rate. An employer with an industry classification code that is without experience in this state for twelve consecutive chargeable months or who has failed to provide correct industrial classification information shall pay at the standard rate. Assignment by the bureau of employer's industrial classification, for the purpose of this subsection, shall be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual, issued by the executive office of the president, office of management and budget. The standard rate shall be assigned an employer account which on computation date has a minus balance reserve, or has failed to file a contribution report or a corrected or sufficient report as provided in section 52-04-09. For each calendar year, the bureau shall estimate the amount of income needed to pay benefits and maintain a balance in the unemployment compensation fund, that as of October 1, 1989, and each succeeding October first, is equal to twenty-five percent of the total benefits paid during the previous twelve months.

2. Rates must be determined as follows:

- a. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate.

- b. The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.
- c. The maximum rate for each calendar year is the average required rate, multiplied by two and three-fourths, rounded to the nearest one-tenth of one percent. However, the maximum rate must be at least five and four-tenths percent.
3. a. Except as otherwise provided in this subsection, an employer's rate may not be reduced below the maximum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year.
- b. If an employer has not been subject to the law as required under subdivision a, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year.
- c. An employer that does not qualify under either subdivision a or b is subject to a rate determined as follows:
- (1) For each calendar year new employers must be assigned a rate of three and one-fourth percent, unless the employer is classified in an industry that the bureau determines has a negative reserve on the computation date.
 - (2) New employers in industries that have a negative reserve on the computation date and employers that have failed to provide correct industrial classification information must be assigned the maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this paragraph must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.
- d. Regardless of any other provision in this subsection, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or

exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.

SECTION 2. AMENDMENT. Section 52-04-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-06. Variations in standard rate of contributions - How determined. Variations from the standard rate of contributions shall be determined in accordance with the following requirements:

- 1- The percent of the average annual payroll by which the cumulative contributions paid by an employer on or before October thirty-first of any year, with respect to wages paid by that employer prior to the first day of October of that calendar year, exceeds the cumulative benefits which were charged to that employer's account and paid on or before September thirtieth of that year, is that employer's reserve ratio. The contribution rate for the next calendar year of an employer eligible under section 52-04-05 will be the basic rate of contributions on the line in the schedule of basic rates opposite that employer's reserve ratio as established for that year.

EMPLOYER'S RESERVE RATIO	BASIC RATE
0% or less	5-0%
More than 0% but less than 1%	4-3%
1% but less than 2%	4-1%
2% but less than 3%	3-9%
3% but less than 4%	3-7%
4% but less than 5%	3-5%
5% but less than 6%	3-3%
6% but less than 7%	3-1%
7% but less than 8%	2-9%
8% but less than 9%	2-7%
9% but less than 10%	2-5%
10% but less than 11%	2-3%
11% but less than 12%	2-1%
12% but less than 13%	1-9%
13% but less than 14%	1-7%
14% but less than 15%	1-5%
15% but less than 16%	1-3%
16% but less than 17%	1-1%
17% but less than 18%	0-9%
18% but less than 19%	0-7%
19% and over	0-5%

- 2- For the calendar year 1983 and each year thereafter, the bureau shall adjust the basic rates in the schedule of basic rates by an adjustment ratio so as to provide a return of contributions needed to pay the projected amount of benefits payable for the following year and to provide for an adequate trust fund reserve. An adequate trust

fund reserve as of October 17, 1986, must be at least fifteen percent of the average annual amount of benefits paid. An adequate trust fund reserve as of October 17, 1987, and each October first thereafter, must be at least twenty-five percent of the average annual amount of benefits paid. The eventual goal for the amount of the trust fund reserve is fifty percent of the average annual amount of benefits paid. The average annual amount of benefits paid shall be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three. Benefits financed by direct reimbursement must be omitted from this computation. After the bureau has determined the necessary adjustment ratio, each basic rate in the schedule of basic rates will be reduced or increased by that adjustment ratio with the result rounded to the nearest lower one-tenth of one percent in the case of a reduction or to the nearest higher one-tenth of one percent in the case of an increase.

- 3- Any employer may voluntarily pay into the unemployment compensation fund an amount in excess of the contributions required to be paid under the provisions of this section and such amount shall be credited to his separate account. His rate of contribution shall be computed or recomputed with such amount included in the calculation. Such contributions voluntarily paid shall not be refunded or used as a credit in the payment of contributions in whole or in part. In no event shall any such amount be included in the computation or recomputation for any year unless it is paid within four months after the beginning of such year.
- 4- If the total benefits chargeable against an employer's account for all periods prior to October first of such year, including benefits paid on or before October first, with respect to weeks of unemployment compensated prior to October first, exceed the total contributions paid by such employer for the same period, including contributions paid on or before October thirty-first with respect to wages paid prior to October first of the same year, his contribution rate for the ensuing calendar year shall be the standard rate.
- 5- In the bureau's determination of the trust fund reserve ratio, neither the amount paid by, nor the cost of benefits charged to, those employers who have elected to pay on a basis other than that which is computed under the provisions of sections 52-04-03 and 52-04-06, shall be taken into account in the computation of contribution rates and taxable wage base.
- 6- When

1. All employers eligible for an experience rate computation must be ranked in descending order by their reserve ratios. An employer's reserve ratio is the percentage of the average annual payroll by which the cumulative contributions paid by that employer on or before October thirty-first of any year, with respect to wages paid by that employer before October first of that same year, exceeds the cumulative benefits charged to that employer's account before October first of that year.
2. For each calendar year the bureau shall establish a schedule of rates, with the minimum rate determined under section 52-04-05 assigned to the first rate group. Each successive rate group must be assigned a rate equal to the previous group's rate plus two-tenths of one percent. The number of rate groups in the schedule must be the number required to provide for a rate group at each two-tenths of one percent interval between the minimum rate and two and one-fourth times the average required rate determined under section 52-04-05.
3. Employers must be assigned to the groups in the rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio employers assigned to the first rate group. Each successively ranked employer must be assigned to the groups in the rate schedule so that those employers reporting seventy-eight percent of the eligible employer's prior year's taxable wages are equally distributed in those rate groups at or below the average rate required of employers eligible for experience rating and twenty-two percent of those wages are equally distributed in those rate groups above the average rate.
4. The average rate of employers eligible for experience rating is determined as follows:

 - a. The estimated amount of taxes to be paid each year by employers not eligible for experience rating must be subtracted from the total required income for the year determined under section 52-04-05.
 - b. The remainder must be divided by the estimated taxable wages of those employers eligible for experience rating, with the result rounded to the nearest one-tenth of one percent.
5. After each year's rate schedule has been established, an employer may pay into the fund an amount in excess of the contributions required to be paid under this section. That amount must be credited to the employer's separate account. The employer's rate must be recomputed with the amount included in the calculation only if that amount was paid by April thirtieth of that year. Payments may not be

refunded or used as credit in the payment of contributions.

6. In the bureau's determination of the projected income requirements for computing contribution rates and taxable wage base, only the wages paid by, and the cost of benefits attributable to, tax rated employers may be taken into account.

7. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll, the tax rate for such that employer shall be is the standard maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

SECTION 3. AMENDMENT. Section 52-04-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. An employer's rate for a calendar year shall be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If when such determination is to be made an employer has failed to file a required report or filed an insufficient report, the bureau shall notify the employer thereof by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year may not be less than the standard maximum rate. If, at any time, an employer has failed to file a required report or filed an insufficient report, the bureau may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. The bureau shall notify the employer of the estimate by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate shall become final for all purposes, except that if the amount of estimated wages is less than the actual wages, the bureau may reconsider the estimate.

SECTION 4. AMENDMENT. Subdivision b of subsection 1 of section 52-06-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. An individual's "weekly benefit amount" ~~shall be an amount equal to~~ is one ~~fifty-second~~ sixty-fifth (if not a multiple of one dollar, to be computed to the next lower multiple of one dollar) of the sum of:

(1) The individual's total wages for insured work paid during the two quarters of the individual's

base period in which the individual's wages were the highest; however; and

- (2) One-half of the individual's total wages for insured work paid during the third highest quarter in the individual's base period.

However, if such that amount is less than the "minimum weekly benefit amount" the individual shall be is monetarily ineligible for benefits. The "minimum weekly benefit amount" shall be eighteen times the current federal minimum hourly wage provided under the Fair Labor Standards Act (29 U.S.C. 206). The "minimum weekly benefit amount", if not a multiple of one dollar, shall be rounded to the next lower multiple of one dollar. The is forty-three dollars. For benefit years beginning after August 8, 1987, the "maximum weekly benefit amount" shall be as hereinafter provided-

- (1) Sixty-two is sixty percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar, shall be the "maximum weekly benefit amount" that can be paid to any individual whose benefit year commences on or after July 1, 1983.
- (2) Sixty-five percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar, shall be the "maximum weekly benefit amount" that can be paid to any individual whose benefit year commences on or after July 1, 1984.
- (3) Sixty-seven percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar, shall be the "maximum weekly benefit amount" that can be paid to any individual whose benefit year commences on or after July 1, 1985. However, if on October first of any calendar year beginning with the calendar year 1989, the trust fund reserve is equal to or greater than the required amount, then as of July first of the next year, the maximum weekly benefit amount is sixty-two percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. Further, if on October first of any calendar year beginning with the calendar year 1989, the trust fund reserve is equal to or greater than the required amount, and if this state's average contribution rate is below the nationwide average for the preceding calendar year, then the maximum weekly benefit

amount is sixty-five percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. The average contribution rate is determined on the basis of total contributions divided by total wages.

SECTION 5. AMENDMENT. Section 52-06-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-05. Maximum potential benefits. Any otherwise eligible individual ~~shall be~~ is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line which includes the individual's ratio of total base-period wages to highest quarter base-period wages:

Ratio of Total Base-Period Wages to High Quarter	Times Weekly Benefit Amount
<u>1.50 to 1.75</u>	<u>12</u>
<u>1.76 to 1.95</u>	<u>14</u>
<u>1.96 to 2.15</u>	<u>16</u>
<u>2.16 to 2.35</u>	<u>18</u>
<u>2.36 to 2.55</u>	<u>20</u>
<u>2.56 to 2.75</u>	<u>22</u>
<u>2.76 to 2.95</u>	<u>24</u>
<u>2.96 or more</u>	<u>26</u>
<u>1.50 to 2.29</u>	<u>12</u>
<u>2.30 to 2.44</u>	<u>14</u>
<u>2.45 to 2.59</u>	<u>16</u>
<u>2.60 to 2.74</u>	<u>18</u>
<u>2.75 to 2.89</u>	<u>20</u>
<u>2.90 to 3.04</u>	<u>22</u>
<u>3.05 to 3.19</u>	<u>24</u>
<u>3.20 or more</u>	<u>26</u>

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 596

SENATE BILL NO. 2128
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

INCREMENTAL BOND FOR IMPACT PROJECTS

AN ACT to create and enact a new section to chapter 52-04 of the North Dakota Century Code, relating to incremental bonding of impact projects for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 52-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Incremental bond for impact projects.

1. Any person, firm, or corporation and every general contractor which will employ or contract for the employment of or which is employing, directly or indirectly through agents, independent contractors or subcontractors on any project in North Dakota with an estimated construction cost of at least twenty-five million dollars including physical construction and site preparation but excluding design and engineering, a majority of which is planned to be completed or discontinued within a period of seven years, and which will require the employment of at least two hundred fifty people is subject to this section. Each employing unit working on a project which meets the criteria specified under this section shall pay the bond required in subsection 2 and shall report annually to the bureau any change in contract bids within the state as may have been determined under subsection 2.
2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall estimate the total job insurance contributions which the employing units will make under the North Dakota Unemployment Compensation Law based on the average estimated number of covered employees during the course of the project. The bureau shall also estimate the total benefits which will be required at the completion of the

project, assuming that fifty percent of covered employees will claim benefits following completion or discontinuance of the project. If estimated benefits exceed estimated contributions, the bureau shall assess and collect from each employing unit an additional amount of one-half percent times the successful bid amount on the project awarded to each employing unit but not to exceed one-half percent times the total amount allowed under all bids accepted under the project. The amount is in addition to any other contribution required under the law and must be treated as incremental bond payments to ensure payment for all benefits ultimately claimed. The payments are not contributions until the ultimate determination of liability is made under subsection 3. The bureau shall amend the amount assessed under this subsection in accordance with any increases in contract bids reported by an employing unit under subsection 1. Any employing unit failing to comply with this subsection may be enjoined by the bureau from engaging or continuing in business until all required payments are made.

3. The amounts collected from each employing unit under this section must be credited to individual interest-bearing incremental bond trust accounts established by the bureau at the Bank of North Dakota.

Eighteen months after the completion or discontinuance of the project or eighteen months after the employing unit completes its phase of the work, the bureau shall determine the total benefits paid to employees of the employing unit or units and if the total amount collected from the units under the North Dakota Unemployment Compensation Law exceed total benefits paid to the employees of the units, the difference plus accrued interest must be refunded to the appropriate unit or units but not exceeding the amount paid under this subsection plus accrued interest. The amount not refunded must be credited to the unemployment compensation fund.

4. Upon completion of the contract requiring a bond in excess of one thousand two hundred fifty dollars, a contractor may receive a credit of ten percent of the total bond for every ten percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. Upon completion of the contract requiring a bond of one thousand two hundred fifty dollars or less, a contractor may receive a credit of ten percent of the total bond for every ten percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. For the purposes of this subsection a person may be considered a resident provided the person has earned in covered employment in North Dakota as defined in title 52, the sum of two thousand dollars during the past four completed calendar quarters

- preceding the date of employment or can provide evidence of having resided in the state during the past four completed calendar quarters preceding the date of employment.
5. Any employing unit, whether contractor, subcontractor, or otherwise, which in turn subcontracts a portion of its contract, may upon application to the bureau and proof of such subcontract receive an adjustment on its bond in direct proportion to the amount of such subcontract.
 6. Failure of any employing unit, whether contractor, subcontractor, or otherwise, to inform the bureau of the issuance of a subcontract or if any subcontractor fails to pay the bond required under this section shall cause the contractor to be liable for payment of the subcontractor bond and any unpaid subcontractor contributions due on the project.
 7. For the purposes of this section, a project includes all entities which employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors, regardless of the number of employees that any particular employing unit may have to perform services on a project, if the overall project involves the employment of at least two hundred fifty persons in the aggregate. In this situation, each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section.
 8. The bureau is authorized to adopt necessary rules for the effective administration and enforcement of this section.
 9. This section applies to projects begun after June 30, 1987. A project must be deemed to have commenced under this section at the time that work begins under the first contract that has been let for any phase or type of work on the project.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 597

SENATE BILL NO. 2127
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

JOB SERVICE BORROWING

AN ACT to create and enact a new section to chapter 52-04 of the North Dakota Century Code, relating to advances from sources other than the federal unemployment trust fund; and to amend and reenact section 52-04-22 of the North Dakota Century Code, relating to the federal advance interest repayment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-22. Federal advance interest repayment fund. There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund shall consist of all interest collected on delinquent contributions and, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner shall be maintained in this separate interest bearing account at the Bank of North Dakota.

~~After all known interest charges have been paid, any remaining moneys in the fund may be transferred to the unemployment compensation fund.~~

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau. ~~Any remaining moneys in the fund not used for the purposes~~

SECTION 2. A new section to chapter 52-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Advances from certain sources other than federal unemployment trust fund. Job service North Dakota may borrow funds from the Bank of North Dakota. Job service North Dakota may also receive Title XII advances from the federal unemployment trust fund. However, the borrowings and advances may not exceed amounts which are necessary and sufficient to meet payment of unemployment compensation benefits, repayment of Title XII advances from the federal unemployment trust fund, and payment of interest on Title XII advances from the federal unemployment trust fund. Any such amounts borrowed from the Bank of North Dakota must be repaid no later than the end of the biennium in which they are borrowed. Any such amounts borrowed from the Bank of North Dakota are not indebtedness of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision. The borrowed funds may be placed in the state unemployment compensation fund or in the federal advance interest repayment fund established under section 52-04-22.

Any such amounts placed in the state unemployment compensation fund may be used to pay unemployment compensation benefits and to repay Title XII advances from the federal unemployment trust fund. Any such amounts placed in the federal advance interest repayment fund may be used to pay interest on Title XII advances from the federal unemployment trust fund.

Job service North Dakota may repay funds borrowed from the Bank of North Dakota, which are placed in the state unemployment compensation fund, from amounts in the state unemployment compensation fund. Job service North Dakota may also repay funds borrowed from the Bank of North Dakota which are placed in the federal advance interest repayment fund, from amounts in the federal advance interest repayment fund. However, any interest due on any borrowed funds whatsoever may not be paid from amounts in the state unemployment compensation fund. Interest due on such borrowed funds must be paid from the federal advance interest repayment fund.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 598

SENATE BILL NO. 2225
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT DISQUALIFICATION

AN ACT to amend and reenact subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the week in which he has left his most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as he:
 - a. Can demonstrate that he has earned remuneration for personal services in employment equivalent to at least eight times his weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left his most recent employment under disqualifying circumstances.

This subsection does not apply if the bureau determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception shall not apply unless the

individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception shall not be charged against the account of the employer from whom the individual became separated as a result of the illness or injury. The bureau may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual shall be charged fees of any kind for the cost of such second opinion.

This subsection shall not apply if the bureau determines that the individual left his last the most recent employment with no reasonable alternative because of a work-related an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times his weekly benefit amount.

Approved April 1, 1987

Filed April 2, 1987

CHAPTER 599

SENATE BILL NO. 2218
 (Committee on Industry, Business and Labor)
 (At the request of Job Service North Dakota)

EDUCATIONAL EMPLOYEE UNEMPLOYMENT BENEFITS

AN ACT to amend and reenact subsections 9, 10, 11, 12, and 13 of section 52-06-02 of the North Dakota Century Code, relating to educational employee disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 9, 10, 11, 12, and 13 of section 52-06-02 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

9. Repealed by S.L. 1971, ch. 479, § 1-
10. Repealed by S.L. 1979, ch. 526, § 3-
11. Which are based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in subsection 27 of section 52-01-01) for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.
12. Which are based on service performed in an instructional, research, or principal administrative capacity for an any educational institution, or in an educational institution

* NOTE: Section 52-06-02 was also amended by section 1 of House Bill No. 1433, chapter 600.

while in the employ of an educational service agency; for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, or during an established and customary vacation period or holiday recess; to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or if the individual performs such services in the period immediately before such vacation period or holiday recess; and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. For the purposes of this subsection and subsection 13, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.

- 13- 10. Which are based on services performed in any other capacity for an any educational institution, or in an educational institution while in the employ of an educational service agency; for any week which commences during a period between two successive academic years or terms; or during an established and customary vacation period or holiday recess; if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or if the individual performs such services in the period immediately before such vacation period or holiday recess; and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law. If compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such

services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

11. Which are based on any services described in subsections 9 or 10 for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.
12. Which are based on any services described in subsections 9 or 10 if the individual performed the services in an educational institution while in the employ of an educational service agency. The disqualification must be as specified in subsections 9, 10, and 11. For this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 600

HOUSE BILL NO. 1433
(C. Williams)

UNEMPLOYMENT BENEFIT DISQUALIFICATION

AN ACT to amend and reenact subsections 12 and 13 of section 52-06-02 of the North Dakota Century Code, relating to disqualifications for unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 12 and 13 of section 52-06-02 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

12. Which are based on service performed in an instructional, research, or principal administrative capacity for an educational institution, or in an educational institution while in the employ of an educational service agency, for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, or during an established and customary vacation period or holiday recess, ~~to any individual~~ if such the individual performs performed such services in the first of such academic years or terms and ~~if~~ there is a contract or a reasonable assurance that ~~such the~~ individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or if the individual ~~performs performed~~ such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that ~~such the~~ individual will perform such services in the period immediately following such vacation period or holiday recess. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or any agency of the federal government and who is in a noncontract full-time career position and who is placed in a nonwork and nonpay status for at least two weeks. For the purposes of this

* NOTE: Section 52-06-02 was also amended by section 1 of Senate Bill No. 2218, chapter 599.

subsection and subsection 13, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 ~~shall be~~ are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.

13. Which are based on services performed in ~~any other~~ a capacity not described in subsection 12 for an educational institution, or in an educational institution while in the employ of an educational service agency, for any week which commences during a period between two successive academic years or terms, or during an established and customary vacation period or holiday recess, if ~~such the~~ the individual performs performed such services in the first of such academic years or terms and there is a reasonable assurance that such the individual will perform such services in the second of such academic years or terms or if the individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such the individual will perform such services in the period immediately following such vacation period or holiday recess. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or any agency of the federal government and who is in a noncontract full-time career position and who is placed in a nonwork and nonpay status for at least two weeks. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 ~~shall be~~ are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law. If compensation is denied to any individual under this subsection and ~~such the~~ the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such that individual shall be is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 601

SENATE BILL NO. 2130
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION ATTORNEY'S FEES

AN ACT to amend and reenact section 52-06-32 of the North Dakota Century Code, relating to unemployment compensation claimant attorney fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-06-32 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-32. Individual claiming benefits not to be charged fees by bureau - Fees of individual's attorney. No A claimant shall may not be charged fees of any kind in any proceeding under this chapter by the bureau, its representatives, or by any court or any officer thereof in any proceeding under this chapter. Any employer or claimant party in any proceeding before the bureau may be represented by counsel or other duly authorized agent in any proceeding before the bureau or its representatives. A claimant's attorney fees, for representation in district court, shall be paid by the bureau, in an amount approved determined to be reasonable by the bureau, only if the claimant finally prevails; however, the bureau may not pay attorney fees if the claimant's attorney is employed by or contracting with a legal services organization funded totally or in part by public funds. A claimant's attorney fees are those fees charged to the claimant by the attorney and which would otherwise be payable by the claimant to the attorney. The bureau may not pay attorney fees for representation in any proceeding before the bureau or its representatives.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 602

SENATE BILL NO. 2219
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

EXTENDED UNEMPLOYMENT BENEFITS

AN ACT to amend and reenact sections 52-07.1-06 and 52-07.1-07 of the North Dakota Century Code, relating to extended unemployment compensation benefit amounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-07.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-07.1-06. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his the individual's eligibility period shall be is an amount equal to the weekly benefit amount payable to him the individual during his the individual's applicable benefit year. Provided, that for any week during a period in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period must be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, must be rounded to the nearest lower full dollar amount.

SECTION 2. AMENDMENT. Section 52-07.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-07.1-07. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his the individual's applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to ~~him~~ the individual under chapter 52-06 in ~~his~~ the individual's applicable benefit year; or
2. Thirteen times ~~his~~ the individual's weekly benefit amount which was payable to ~~him~~ the individual under chapter 52-06 for a week of total unemployment in the applicable benefit year. Provided further, that during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to the individual's applicable benefit year must be reduced by an amount equal to the aggregate of the reductions under section 52-07.1-06 in the weekly amounts paid to the individual.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 603

SENATE BILL NO. 2252
(Committee on State and Federal Government)
(At the request of Job Service North Dakota)

OLD-AGE SURVIVORS' FUND CONTRIBUTIONS

AN ACT to create and enact a new subsection to section 52-09-07 of the North Dakota Century Code, relating to moneys paid or deposited into the old-age survivors' fund; to amend and reenact sections 52-09-06 and 52-09-09 of the North Dakota Century Code, relating to investing and disbursing money in the old-age survivors' fund and rates of contributions for purposes of old-age and survivor insurance; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-09-06. Custodian and trustee of fund - Investing and disbursing. The treasurer of the state of North Dakota is hereby made the custodian and trustee of the old-age survivors' fund and shall administer the same in accordance with the directions of the bureau. It shall be the duty of the trustee:

1. To hold said trust funds.
2. To invest such portion of said trust funds as are not needed for current payment of benefits under this chapter and costs of administration of this chapter and chapter 52-10 in interest-bearing bonds issued by the United States, or by the state of North Dakota, or in bonds, certificates of indebtedness, or warrants of any political subdivision of the state which constitute the general or contingent general obligations of the issuing tax authority and to sell and dispose of the same when needed for the payment of benefits under this chapter and costs of administration of this chapter and chapter 52-10.
3. To disburse such trust funds upon warrants drawn by the state treasurer pursuant to the order of the bureau.

4. To forward to the office of management and budget a monthly abstract showing all of the deposits to and disbursements from such trust fund.

SECTION 2. A new subsection to section 52-09-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

The legislative assembly may appropriate moneys from this fund to be used by the bureau for the purposes of administration of this chapter and chapter 52-10. The bureau will maintain complete and accurate records of all appropriations under this subsection, and expenditures made from those appropriations. All disbursements for administrative expenses from the fund must be paid by warrant checks prepared by the bureau.

SECTION 3. AMENDMENT. Section 52-09-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-09-09. **Rate of contribution.** In addition to all other taxes there is hereby levied upon each employer, as defined in section 52-09-20, and also upon each employee, as defined in section 52-09-20, a tax, equal to one per centum of the wages paid before July 1, 1955, and two per centum of the wages paid after June 1955, up to July 1, 1957, to be paid by each employer and each employee. The above tax imposed by this chapter shall be collected by the employer from the employee by deducting the amount of the tax from the wages as and when paid. From and after July 1, 1957, and until July 1, 1959, the tax upon each employer shall be equal to four percent of the wages paid to each employee, and after June 30, 1959, up to July 1, 1961, such tax shall be equal to three and one-half percent, and after June 30, 1961, and until July 1, 1963, such tax shall be equal to three percent, and after June 30, 1963, such tax shall be equal to two percent, and after December 31, 1965, such tax shall be equal to one percent. After June 30, 1957, there shall be no tax hereunder upon the employee. Provided, however, if on the first day of October in any year the accumulated contributions under this chapter equal or exceed an amount two times the annual benefit payments of the twelve months ending on September thirtieth of that year one and one-half times the sum of the benefit payments and costs of administration of this chapter and chapter 52-10 for the twelve months ending on September thirtieth of that year, the tax shall be suspended during the succeeding year, and until such year in which, on the first day of October of the previous year, the accumulated contributions are less than one and one-half times the annual benefit payments for the twelve months ended as of September thirtieth of that year the sum of the benefit payments and costs of administration of this chapter and chapter 52-10 for the twelve months ending on September thirtieth of that year.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on January 1, 1987.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 604

HOUSE BILL NO. 1426
(Representatives Flaagan, O. Hanson)
(Senator Richard)

CHAND AND OASIS MILL LEVIES

AN ACT to amend and reenact sections 52-09-08 and 57-15-28.1 of the North Dakota Century Code, relating to mill levy limitations for counties participating in the old age and survivors' insurance program and other related programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 52-09-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-09-08. Default in taxes - Interest - Action to collect - Levy of tax by political subdivisions. Taxes unpaid on the date on which they are due and payable as prescribed by the bureau, shall bear interest at the rate of one-half of one per centum per month from and after such date until payment plus accrued interest is received by the bureau; provided, that the bureau may prescribe fair and reasonable regulations pursuant to which such interest shall not accrue with respect to taxes required. In no case shall the amount of interest imposed hereby be less than five dollars. Interest collected pursuant to this section shall be paid into the old-age and survivors' fund.

1. If within thirty days after due notice, the employer defaults in payment of taxes or interest thereon, the amount due shall be collected by civil action in the name of the bureau and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect taxes or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions.
2. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision.

* NOTE: Section 52-09-08 was also amended by section 5 of House Bill No. 1299, chapter 232.

3. The political subdivision, except a school district, a multidistrict special education board, or a center board of a multidistrict vocational education center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1. Within the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section shall be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter shall be made out of the school district's special fund established pursuant to section 57-15-14.2.

SECTION 2. AMENDMENT. Section 57-15-28.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-28.1. Exceptions to tax levy limitations in political subdivisions.

The tax levy limitations specified by law do not apply to the following mill levies, expressed in mills per dollar of taxable valuation of property in the political subdivision. For purposes of this section "political subdivision" has the same meaning as in section 32-12.1-02.

1. A political subdivision levying a tax for the control of pests in accordance with section 4-33-11 may levy a tax not exceeding one mill.
2. A political subdivision, except a school district, levying a tax for an insurance reserve fund according to section 32-12.1-08 may levy a tax not exceeding five mills.
3. A political subdivision, except a school district, levying a tax for the payment of a judgment in accordance with section 32-12.1-11 may levy a tax not exceeding five mills.
4. A political subdivision levying a tax for railroad purposes in accordance with section 49-17.2-21 may levy a tax not exceeding four mills.
5. A political subdivision, except a school district, levying a tax for old age and survivors' insurance according to section 52-09-08 may levy a tax not exceeding ~~forty~~ thirty mills.
6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills.

Additionally, tax levy limitations do not apply to taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 605

SENATE BILL NO. 2462
(Langley, Vosper)

OASIS BENEFITS

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to primary insurance benefits under the North Dakota old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Primary insurance benefit" means ~~an amount equal to the~~ sum of the following:
 - a. (1) Fifty ~~per centum~~ percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; ~~or~~
 - (2) If the average monthly wage exceeds seventy-five dollars, ~~fifty per centum of seventy-five~~ thirty-seven dollars and fifty cents, plus ~~fifteen per centum~~ percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars; ~~and~~
- b. ~~An amount equal to one per centum~~ One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; ~~and~~
- c. (1) Effective July 1, 1985 1987, the term "primary insurance benefit" shall be the total of the sums determined in subdivisions a and b plus one two hundred eighty twenty dollars. Where the primary insurance benefit thus computed is less than one

hundred eighty dollars; the benefit shall be one hundred eighty dollars; or

- (2) Effective July 1, 1986 1988, the term "primary insurance benefit" shall be the total of the sums determined in subdivisions a and b plus two hundred forty dollars. Where the primary insurance benefit thus computed is less than two hundred dollars, the benefit shall be two hundred dollars. The provisions apply to valid claims filed before and after the specified date.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 606

SENATE BILL NO. 2137
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

SOCIAL SECURITY FUND TRANSFERS

AN ACT to amend and reenact subsection 4 of section 52-10-04, subsection 4 of section 52-10-05, and subsection 4 of section 52-10-06 of the North Dakota Century Code, relating to contributions for purposes of administration of social security and old-age survivor insurance, delinquent social security payments, and disbursements for administrative expenses from the social security contribution fund; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 52-10-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. In addition to the contributions required in subsection 1, every employer shall be required to pay for the period of coverage, into the contribution fund established by section 52-10-06, contributions, with respect to wages as defined in section 52-10-02, equal to one-tenth of one percent after June 1959. The purpose of this contribution is to provide a fund out of which the legislative assembly may appropriate for the administration of this chapter and chapter 52-09. The job insurance division will maintain complete and accurate records of all contributions under this subsection, and appropriations made therefrom. If on the first day of June in any year the accumulated contributions under this subsection, less appropriations, exceeds one hundred thousand dollars, or more, the tax shall be suspended during the succeeding year, and until such year in which, on the first day of June of the previous year, the accumulated contributions, less appropriations, are less than one hundred thousand dollars, at which time the tax shall be reimposed and collected as herein provided. All unexpended employer contributions in the social security contribution fund paid in to provide a fund out of which the legislative

assembly could appropriate for the administration of this chapter and chapter 52-09 as of June 30, 1987, must be transferred by the office of management and budget to the bureau for deposit by the bureau into the old-age survivors' fund established by section 52-09-05.

SECTION 2. AMENDMENT. Subsection 4 of section 52-10-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Delinquent payments due under subdivision a of subsection 3 shall bear interest at the rate specified in the Social Security Act at 42 U.S.C. 418 and may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department or agency of the state. In no case shall the interest imposed hereby be less than five dollars. In addition, penalty may be assessed on delinquent reports if such penalty is provided for in the Social Security Act at 42 U.S.C. 418. Any such penalty shall be under the terms, conditions, and in the amounts specified in the Social Security Act. In no case shall any penalty imposed hereby be less than five dollars. Annually on each September thirtieth the bureau shall determine the balance in the fund created by section 52-10-06 resulting from interest and penalties collected which are not or will not be due to the secretary of treasury. The bureau shall transfer this balance on September thirtieth to the old-age survivors' fund created by section 52-09-05.

SECTION 3. AMENDMENT. Subsection 4 of section 52-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The treasurer of the state of North Dakota shall be ex officio treasurer and custodian of the social security contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency. All disbursements from such fund except administrative expenses shall be made in accordance with such regulations as the state agency may prescribe. ~~All disbursements for administrative expenses from such fund shall be paid by warrant-checks prepared by the office of management and budget after submission of vouchers to the office of the budget for its approval.~~

SECTION 4. EFFECTIVE DATE. This Act is retroactively effective on January 1, 1987.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 1, 1987
Filed April 2, 1987

SPORTS AND AMUSEMENTS

CHAPTER 607

HOUSE BILL NO. 1074
(Kloubec)

BOXING AND WRESTLING EXHIBITION TAX

AN ACT to amend and reenact sections 53-01-07, 53-01-09, 53-01-10, 53-01-12, 53-01-13, 53-01-15, 53-01-16, 53-01-18, and 53-01-19 of the North Dakota Century Code, relating to removal of the five percent gross receipts tax on boxing, sparring, and wrestling exhibitions, and to removal of regulatory authority of the secretary of state over wrestling exhibitions; and to repeal sections 53-01-11 and 53-01-14 of the North Dakota Century Code, relating to the bond required and inspection of records for payment of the five percent gross receipts tax on boxing, sparring, and wrestling exhibitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-07. Duties of state athletic commissioner. The secretary of state shall have charge and supervision of all boxing, or sparring, ~~and wrestling~~ exhibitions held in the state and may:

1. Make rules ~~and regulations~~ governing the conduct of boxing, or sparring, ~~and wrestling~~ exhibitions.
2. Issue licenses to individuals or organizations desiring to promote or conduct such exhibitions and suspend or revoke such licenses at pleasure.
- 3- ~~Collect five percent of the gross receipts from admissions to boxing, sparring, and wrestling exhibitions held within the state.~~

The provisions of this chapter shall not apply to any boxing, or sparring, ~~or wrestling~~ exhibitions the net proceeds of which are to be devoted to charitable purposes.

SECTION 2. AMENDMENT. Section 53-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-09. Moneys paid into state treasury - Disbursement. All moneys collected by the secretary of state pursuant to the provisions of this chapter shall be paid into the state treasury and shall be disbursed only as other state funds are disbursed by law. The percentage of admissions collected by the secretary of state, as provided in subsection 3 of section 53-01-07, shall be paid into the state treasury at such times and in such manner as the state treasurer may direct.

SECTION 3. AMENDMENT. Section 53-01-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-10. Application for license - Terms of license. Every application for a license to promote or conduct boxing, or sparring, and wrestling exhibitions, shall designate the territory in which the licensee may operate. Unless revoked by the secretary of state, the license granted as provided in this chapter shall authorize the individual or organization receiving the same to conduct boxing, or sparring, and wrestling exhibitions in the community designated therein, and no other, for the period of time specified, subject to the rules and regulations of the secretary of state and such restrictions as the secretary of state in his discretion may incorporate therein.

SECTION 4. AMENDMENT. Section 53-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-12. Annual license fee for exhibitions. The secretary of state, at the time of the issuance of the license, shall collect an annual license fee for the holding of boxing, or sparring, and wrestling exhibitions, pursuant to the following schedule:

- 1. Municipalities of ten thousand or more population \$35.00
- 2. Municipalities of from five thousand to ten thousand population 15.00
- 3. Municipalities of from one thousand to five thousand population 10.00
- 4. Municipalities of less than one thousand population 5.00

SECTION 5. AMENDMENT. Section 53-01-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-13. Restrictions on licensee. No person or organization with a license to promote or conduct boxing, or sparring, and wrestling exhibitions shall engage directly or indirectly in the managing of any boxer or wrestler. No boxing, or sparring, or wrestling exhibition shall be held on Sunday, nor shall any such exhibition have a duration of more than fifteen rounds of three minutes each.

SECTION 6. AMENDMENT. Section 53-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-15. Licensing of boxers, wrestlers, managers, and referees - Fee. The secretary of state may license all boxers, wrestlers, managers, and referees, and may require them to pay an annual fee not to exceed the sum of five dollars.

SECTION 7. AMENDMENT. Section 53-01-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-16. Amateur and professional exhibitions. The secretary of state shall make rules and regulations to govern the holding of amateur and professional boxing and wrestling exhibitions within the state. Such rules and regulations shall conform, wherever practicable, to the rules and regulations prescribed by the New York boxing commission. The promoter or holder of any bout for which any charge is made or money collected shall be liable for five percent of the gross receipts as provided in subsection 3 of section 53-01-07.

SECTION 8. AMENDMENT. Section 53-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-18. Certain organizational and institutional matches exempt. All boxing, or sparring, and wrestling exhibitions conducted or promoted by the high schools, the schools of higher learning, or amateur boxing, or sparring, and wrestling sponsored by nonprofit organizations in this state, and those participating therein, shall be exempted from the provisions of this chapter.

SECTION 9. AMENDMENT. Section 53-01-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-19. Holding match or contest without license a misdemeanor.

1. Any person who, without a license from the secretary of state, shall:
 - a. Send or cause to be sent, published, or otherwise made known, any challenge to fight or engage in any public boxing, or sparring, or wrestling exhibition or contest, with or without gloves, for any prize, reward, or compensation, or at which any admission fee is charged, either directly or indirectly; or
 - b. Go into training preparatory for such exhibition or contest; or
 - c. Act as a trainer, aider, arbiter, backer, referee, umpire, second, surgeon, assistant, or attendant at such exhibition or contest, or any preparation for the same; and
2. Any owner or lessee of any grounds, building, or structure, permitting the same to be used for such match, exhibition, or contest,

shall be guilty of a class B misdemeanor. This section shall not apply to boxing or sparring ~~or wrestling~~ exhibitions held or to be held under a license issued by the secretary of state in keeping with the rules and regulations prescribed.

SECTION 10. REPEAL. Sections 53-01-11 and 53-01-14 of the North Dakota Century Code are hereby repealed.

Approved March 13, 1987
Filed March 16, 1987

CHAPTER 608

SENATE BILL NO. 2461
(Maixner, Vosper, Bakewell, D. Meyer, Waldera)

POKER

AN ACT to create and enact a new section to chapter 53-06.1 and a new subsection to section 53-06.1-07 of the North Dakota Century Code, relating to conduct of certain games of chance; and to amend and reenact subsection 1 of section 53-06.1-01 of the North Dakota Century Code, relating to definitions applicable to the charitable gambling law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Adjusted gross proceeds" means, except in the case of the games of draw poker and stud poker authorized under section 3 of this Act, gross proceeds less cash prizes or the price of merchandise prizes. In the games of draw poker and stud poker, "adjusted gross proceeds" means the share of the pot retained by the eligible organization.

SECTION 2. A new subsection to section 53-06.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Draw poker and stud poker in accordance with section 3 of this Act.

SECTION 3. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Draw poker and stud poker - Limited authorization. An eligible organization may conduct the game of draw poker on not more than two occasions per year as follows:

1. The eligible organization may supply the dealer.

2. The maximum single bet is one dollar.
3. Not more than three raises, of not more than one dollar each, may be made among all the players in each round of bets. Otherwise the normal rules of draw poker and stud poker apply.
4. The eligible organization shall assess the players ten dollars per player, or for games with a pot of at least ten dollars, two percent of the pot in each game. For games with a pot of less than ten dollars, an assessment is not required.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 609

SENATE BILL NO. 2067
(Legislative Council)
(Interim Law Enforcement Committee)

CHARITABLE GAMING EQUIPMENT

AN ACT to create and enact two new subsections to section 53-06.1-01 of the North Dakota Century Code, relating to definitions in the charitable gaming law; and to amend and reenact sections 53-06.1-08, 53-06.1-14, 53-06.1-16.1, and 53-06.1-17 of the North Dakota Century Code, relating to licensing of manufacturers of certain charitable gambling equipment and adoption of certain rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 53-06.1-01 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Charitable gaming ticket" means the game piece used in pull tab games or jar games.

"Manufacturer" means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of games of chance under this chapter. "Manufacturer" does not include a resident printer who prints raffle tickets at the request of a licensed or authorized organization, and who sells or otherwise distributes such raffle tickets to such an organization.

* SECTION 2. AMENDMENT. Section 53-06.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-08. Punchboards and jars - Sale of chances - Maximum price per ticket. No person or organization engaged in the selling of chances from jars or punchboards under this chapter may discard the chances from any jar or punchboard once the contents of such jar or punchboard are offered for sale to eligible participants, unless all

* NOTE: Section 53-06.1-08 was also amended by section 1 of House Bill No. 1280, chapter 614.

of the highest denomination of winners have been sold. The maximum price per ~~jar~~ charitable gaming ticket or pull tab may not exceed two dollars.

SECTION 3. AMENDMENT. Section 53-06.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-14. Distributors and manufacturers - Licensure.

1. Every manufacturer of charitable gaming tickets and every distributor shall annually apply for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit a ~~one thousand dollar~~ the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand dollars, and the license fee for a manufacturer of charitable gaming tickets is two hundred fifty dollars.
2. Every nonresident manufacturer or distributor of raffle tickets or equipment for games of chance bingo paper or supplies doing business in this state shall appoint a North Dakota agent who shall be is licensed as a distributor. No distributor shall may sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to eligible organizations. A manufacturer of charitable gaming tickets may not sell, market, or otherwise distribute charitable gaming tickets, other than to a licensed distributor.
3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. At no time shall any eligible organization print, manufacture, or construct any raffle tickets or equipment for games of chance for sale to any other eligible organization.
4. No licensed or authorized eligible organization shall may be a distributor. No distributor may be a wholesaler of liquor or alcoholic beverages may be a distributor.
5. The attorney general shall have the power, on his own may, by motion based on reasonable grounds or on written complaint, to suspend or revoke a distributor's or manufacturer's license in accordance with chapter 28-32 for violation, by the licensee or any officer, director,

agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.

SECTION 4. AMENDMENT. Section 53-06.1-16.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-16.1. Bogus chips, marked cards, cheating devices, or fraudulent schemes unlawful - Penalty. It is unlawful for any person playing or conducting any authorized game of chance conducted by a licensed organization:

1. To use bogus or counterfeit chips, pull tabs, or jar charitable gaming tickets, or to substitute or use any game, cards, or pull tabs or jar charitable gaming tickets that have been marked or tampered with.
2. To employ or have on one's person any cheating device to facilitate cheating in any game of chance.
3. To use any fraudulent scheme or technique.

A person violating this section is guilty of a class A misdemeanor unless the amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony.

SECTION 5. AMENDMENT. Section 53-06.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-17. Rules. The licensing authority shall adopt rules in accordance with chapter 28-32, relating to but not limited to methods of play, conduct, and promotion of games of chance; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by licensees and authorized organizations; methods of competition and doing business by distributors; and marking or identification of raffle tickets, charitable gaming tickets, bingo equipment, jars, pull tabs, punchboards, or any other implements of gambling used or distributed in this state to implement or effectuate the provisions and purposes of this chapter; quality standards for the manufacture of charitable gaming tickets; to ensure that the entire net proceeds of games of chance are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter; to define capital improvements and furnishings; to protect and promote the public interest; to ensure fair and honest games of chance; to ensure that fees and taxes are paid; and to seek to prevent or detect unlawful gambling activity.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 610

HOUSE BILL NO. 1282
(Ulmer)

GAMES OF CHANCE PROCEEDS

AN ACT to amend and reenact subsection 6 of section 53-06.1-01 of the North Dakota Century Code, relating to allowable uses of proceeds from games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 53-06.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:
 - a. Uses To the extent used for purposes enumerated in subdivisions c through j, uses benefiting those organizations which that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code.
 - b. Uses To the extent used for purposes enumerated in subdivisions c through j, uses benefiting an organization registered with the North Dakota secretary of state under chapter 50-22.
 - c. Uses benefiting an indefinite number of persons either by bringing them under the influence of education, cultural programs, or religion or relieving them of disease, suffering, or constraint.
 - d. Fraternal uses specified by an organization's constitution, charter, or bylaws not of direct benefit to the eligible organization or any member thereof.
 - e. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof.

- f. The erection or maintenance of public buildings or works.
- g. Uses otherwise lessening the burden of government.
- h. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.
- i. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.
- j. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property unless it is used exclusively for one or more of the stated uses. Uses shall not include any activities consisting of attempts to influence legislation or participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 611

HOUSE BILL NO. 1281
(Ulmer)

LOCAL GAMING AUTHORIZATION

AN ACT to amend and reenact section 53-06.1-03 of the North Dakota Century Code, relating to local authorization of certain games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-03. Licensure - Exceptions for raffles, sports pools, and bingo - City and county ~~licensure~~ authorization - Fees - Suspension and revocation.

1. Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a fifty dollar license fee. An eligible organization may apply for local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. To obtain local authorization, the eligible organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners ~~for a license~~. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general and ~~must be accompanied by a ten dollar permit fee payable to the city or county governing body.~~ The governing body may by ordinance or resolution establish authorization fees that, for an authorization

* NOTE: Section 53-06.1-03 was also amended by section 4 of House Bill No. 1176, chapter 532, and by section 1 of Senate Bill No. 2064, chapter 612.

for one occasion, do not exceed ten dollars, and for other authorizations, do not exceed twenty-five dollars.

2. The attorney general shall license such organizations which conform to the requirements of this chapter by issuing licenses as follows:
 - a. A class A license to an eligible organization licensed as a retail alcoholic beverage dealer in North Dakota that maintains a building for the use of its members and guests, and that offers meals or liquor or both as part of its operation.
 - b. A class B license to any other eligible organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license.
 - c. A class C license to an eligible organization that conducts games of chance on not more than two occasions per year, regardless of whether that organization is licensed as a retail alcoholic beverage dealer in this state.
 - d. The attorney general shall establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the eligible organization, and the adjusted gross proceeds collected or expected to be collected by the eligible organization.
3. Games of chance may be operated or conducted only on premises or sites set forth in the application as follows:
 - a. Class A license applicants are limited to one location. A special permit for an alternate location may be granted by the attorney general for a single specific occasion per licensing year upon written request.
 - b. License applicants must first secure approval of the proposed site or sites on which it intends to conduct games of chance under this chapter from the governing body of the city, if within city limits, or the county, if outside city limits, where the site or sites are located. This approval or permit, which may be granted at the discretion of the governing body, must accompany the license application to the attorney general. The governing body may charge a one hundred dollar fee for this permit, which the organization may deduct from its tax liability under section 53-06.1-12 for the year in which the permit fee is paid.

- c. Rented premises are subject to rules adopted by the attorney general. At sites where the game of twenty-one is conducted, the maximum monthly rent shall not exceed one hundred fifty dollars multiplied by the number of tables on which the game of twenty-one is played for any purposes associated with the privilege of conducting all games of chance at that site.
- d. Only one eligible organization at a time may be authorized to conduct games of chance at a specific location, except that a raffle drawing may be conducted for special occasions when one of the following conditions are met:
- (1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.
 - (2) Upon request of the licensee, the license is suspended for that specific day by the attorney general.
- e. Licenses, rules of play, and state identification devices must be displayed on forms and in the manner specified in rules adopted by the attorney general.
4. The attorney general shall have the power, on his or her may, by motion, based on reasonable ground or upon written complaint, ~~to~~ suspend or revoke, under ~~the provisions of~~ chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule ~~or regulation~~ adopted under this chapter.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 612

SENATE BILL NO. 2064
(Legislative Council)
(Interim Law Enforcement Committee)

GAMING RENT LIMITS

AN ACT to create and enact three new sections to chapter 53-06.1 of the North Dakota Century Code, relating to maximum rent payable for conducting certain games of chance; and to amend and reenact subdivision c of subsection 3 of section 53-06.1-03 of the North Dakota Century Code, relating to maximum rent payable for conducting certain games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision c of subsection 3 of section 53-06.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Rented premises are subject to rules adopted by the attorney general. ~~At sites where the game of twenty-one is conducted, the maximum monthly rent shall not exceed one hundred fifty dollars multiplied by the number of tables on which the game of twenty-one is played for any purposes associated with the privilege of conducting all games of chance at that site.~~

SECTION 2. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bingo sites - No limit on rent. For all purposes associated with the privilege of conducting games of chance, there is no limit on the monthly rent at a site where bingo is the primary game of chance conducted.

SECTION 3. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Twenty-one sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other

- * NOTE: Section 53-06.1-03 was also amended by section 4 of House Bill No. 1176, chapter 532, and by section 1 of House Bill No. 1281, chapter 611.

than one where bingo is the primary game of chance being conducted, but where the game of twenty-one is conducted, the monthly rent may not exceed one hundred fifty dollars multiplied by the number of tables on which the game of twenty-one is conducted.

SECTION 4. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Pull tabs or jars sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other than one where bingo is the primary game of chance being conducted, the monthly rent may not exceed:

1. If the game of twenty-one is conducted on the site, in addition to the rent allowable for the game of twenty-one, fifty dollars.
2. If the game of twenty-one is not conducted on the site, one hundred fifty dollars.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 613

HOUSE BILL NO. 1378
(Ulmer)

GAMING PRIZES AND EXPENSES

AN ACT to amend and reenact section 53-06.1-06 of the North Dakota Century Code, relating to expenses and prizes of games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-06. Persons permitted to conduct games of chance - Premises - Equipment --Expenses - Compensation.

1. No person, except a member or employee of an eligible organization or a member of an organization auxiliary to an eligible organization, may assist in the holding, operating, or conducting of any game of chance under this chapter.
2. No item of expense incurred in connection with the holding, operating, or conducting of any game of chance held, operated, or conducted pursuant to this chapter may be deducted from adjusted gross proceeds, except bona fide expenses in reasonable amounts as provided under section 53-06.1-11. No games of chance may be conducted with any equipment other than equipment owned by an eligible organization or rented at a reasonable rate by an eligible organization from a licensed distributor.
3. The governing board of an eligible organization shall be primarily responsible for the proper determination and distribution of the entire net proceeds of any game of chance held in accordance with this chapter.
4. The premises where any game of chance is being held, operated, or conducted, or where it is intended that such game will be held, shall be open to inspection by the

- licensing authority, its agents and employees, by representatives of the governing body authorizing games of chance, and by peace officers of any political subdivision of this state.
5. When any merchandise prize is awarded in a game of chance, its value ~~shall be~~ is its current retail price. ~~No merchandise prize shall be redeemable or convertible into cash directly or indirectly.~~
 6. Equipment, prizes, and supplies for games of chance shall not be purchased or sold at prices in excess of the usual price thereof.
 7. The entire net proceeds derived from the holding of games of chance must be devoted within three months from the date such proceeds were earned to the uses permitted by this chapter. Any organization desiring to hold the net proceeds of games of chance for a period longer than three months from the date such proceeds were earned must apply to the licensing authority or governing body, as the case may be, for special permission, and upon good cause shown, the licensing authority or governing body may grant the request.
 8. Only the members of an organization licensed as a class A licensee by the attorney general under this chapter and their spouses and bona fide guests may participate in playing games of chance conducted by such licensed organization.
 9. No person convicted of a felony within the last two years, or determined by the attorney general to have participated in organized crime or unlawful gambling, may be permitted to sell or distribute equipment, or conduct or assist in games of chance under this chapter.
 10. Any person involved with the conduct of games of chance must be:
 - a. A person of good character, honesty, and integrity.
 - b. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 614

HOUSE BILL NO. 1280
(Ulmer)

JAR AND PUNCHBOARD CHANCES

AN ACT to amend and reenact section 53-06.1-08 of the North Dakota Century Code, relating to charitable gambling jars and punchboards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-08. Punchboards and jars - Sale of chances - Maximum price per ticket. ~~No~~ Unless all of the highest denomination of winners have been sold, or unless otherwise permitted by the attorney general, a person or organization engaged in the selling of chances from jars or punchboards under this chapter may not discard the chances from any jar or punchboard once the contents of such that jar or punchboard are offered for sale to eligible participants, unless all of the highest denomination of winners have been sold. The maximum price per jar ticket or pull tab may not exceed two dollars.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 53-06.1-08 was also amended by section 2 of Senate Bill No. 2067, chapter 609.

CHAPTER 615

SENATE BILL NO. 2065
(Legislative Council)
(Interim Law Enforcement Committee)

PULL TABS WINNERS LIMIT

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to prize limitations on charitable gambling pull tab and jar games.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitation on pull tab and jar prizes. An eligible organization may not conduct a pull tab or jar game in which the highest denomination winner exceeds five hundred dollars.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 616

HOUSE BILL NO. 1283
(Ulmer)

GAMING STATEMENT OF RECEIPTS

AN ACT to amend and reenact section 53-06.1-11 of the North Dakota Century Code, relating to issuance of prizes and to expense limitations with respect to charitable gambling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-11. Statement of receipts - Expenses.

1. All moneys collected or received from games of chance and admissions thereto, except cash prizes of one hundred dollars or less paid immediately, ~~shall~~ must be deposited in a special account of the eligible organization which ~~shall contain~~ contains only ~~such~~ that money. Cash prizes of more than one hundred dollars, the purchase prices of merchandise prizes, and all expenses for such games of chance shall be withdrawn from such account by consecutively numbered checks duly signed by a specified officer or officers of the eligible organization and payable to a specific person or organization. There shall also be written on the check the nature of the expense or prize for which the check is drawn. No check shall be drawn to "cash" or a fictitious payee. In the case of a cash prize of more than one hundred dollars, the prize may also be issued by an accountable receipt or nonnegotiable instrument approved by the attorney general.
2. No part of the net proceeds after they have been given over to another organization shall be used by the donee organization to pay any person for services rendered or materials purchased in connection with the conducting of games of chance by the donor organization.

3. No item of expense Subject to the limitations of this subsection, expenses incurred in connection with holding, operating, or conducting any game of chance pursuant to this chapter may be deducted from adjusted gross proceeds, except bona fide expenses of a reasonable amount actually and necessarily incurred and directly attributable only to the conduct of the games of chance. Bona fide expenses do not include overhead, capital costs, and general maintenance, except as permitted in subsection 4. For an organization that does not use any of the net proceeds for that organization's own purposes, to the extent that total expenses for games of chance may do not exceed forty-five percent of the total adjusted gross proceeds, computed on an annual basis. For other organizations, total expenses for games of chance may not exceed forty percent of the total adjusted gross proceeds, computed on an annual basis. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes.
- 4- For an organization that does not use any of the net proceeds for that organization's own purposes, expense payments for games of chance deductible from adjusted gross proceeds may be made for any purpose. For other organizations, expense payments for games of chance deductible from adjusted gross proceeds may be made only for the following purposes:
- a- The purchase of necessary goods, wares, and merchandise.
 - b- The securing of services reasonably necessary for repair of equipment, and for operating or conducting games of chance.
 - c- For rent if the premises or equipment are rented, or for janitorial services if premises are not rented.
 - d- For accountant's fees.
 - e- For license fees.
 - f- Additional overhead expenses not to exceed the sum of two hundred dollars per month.

This subsection does not authorize violations of the rent limitations contained in this chapter.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 617

SENATE BILL NO. 2063
(Legislative Council)
(Interim Law Enforcement Committee)

GAMING ENFORCEMENT

AN ACT to amend and reenact section 53-06.1-12.1 of the North Dakota Century Code, relating to taxation of charitable gambling activities and the use of tax proceeds; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-12.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-12.1. Allocation of games of chance tax - Appropriation. The state treasurer, at the direction of the licensing authority, shall pay quarterly to cities and counties in proportion to the tax collected under section 53-06.1-12 from eligible organizations conducting games of chance within each city, for sites within city limits, or within each county, for sites outside city limits, the following amounts which are hereby appropriated:

1. Two-fifths of the tax collected under subsection 1 of section 53-06.1-12 within the city or county.
2. One-tenth of the tax collected under subsection 2 of section 53-06.1-12 within the city or county.

The remaining tax collected under section 53-06.1-12, up to the amount paid during the 1985-87 biennium, shall be paid by the licensing authority to the state treasurer for deposit in the state general fund. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with enforcement of this chapter within the city or county. Any amount remaining because of the limitation with respect to the 1985-87 biennium, up to two hundred thousand dollars, must be deposited in the attorney general's operating budget and must be used only for the enforcement of gaming as appropriated. Any amount remaining in excess of two hundred thousand dollars must be deposited by the state treasurer in the general fund.

SECTION 2. APPROPRIATION. There is hereby appropriated out of the moneys derived pursuant to section 1 of this Act, the sum of \$200,000 to the attorney general's operating budget for the enforcement of gaming for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 21, 1987
Filed April 30, 1987

CHAPTER 618

SENATE BILL NO. 2319
(Senators D. Meyer, David, Langley)
(Representatives Dalrymple, Kretschmar, Ulmer)

PARIMUTUEL HORSE RACING

AN ACT to provide for parimutuel horse racing conducted by certain civic and service clubs, charitable, fraternal, religious, and veterans' organizations, and other public-spirited organizations, the creation of a racing commission, license authorization, and fees; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Certificate system" means the system of betting described in section 10 of this Act.
2. "Charitable organization" means a nonprofit organization operated for the relief of poverty, distress, or other conditions of public concern in this state, and has been so engaged in this state for at least two years.
3. "Civic and service club" means a branch, lodge, or chapter of a nonprofit national or state organization that is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or service purpose in this state, and has so existed in this state for at least two years. The term includes a similar local nonprofit organization, not affiliated with a state or national organization, which is so recognized by a resolution adopted by the governing body of the local jurisdiction in which the organization conducts its principal activities, and which has existed in this state for at least two years.
4. "Commission" means the North Dakota racing commission.
5. "Director" means the director of the commission.

6. "Fraternal organization" means a nonprofit organization in this state, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members, and has so existed in this state for two years. The term does not include a college or high school fraternity.
7. "Local jurisdiction" means, with respect to a site inside the city limits of a city, that city, and with respect to a site not inside the city limits of a city, the county in which the site is located.
8. "Other public-spirited organization" means a nonprofit organization recognized by the governing body of the appropriate local jurisdiction by resolution as public-spirited and eligible under this Act.
9. "Racing" means horse racing under the certificate system.
10. "Religious organization" means a nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances, and which has been so gathered or united in this state for at least two years.
11. "Veterans' organization" means a congressionally chartered organization in this state, or a branch, lodge, or chapter of a nonprofit national or state organization in this state, the membership of which consists of individuals who were members of the armed services or forces of the United States, and which has so been in existence in this state for at least two years.

SECTION 2. Racing commission - Members - Appointment - Term - Qualifications - Compensation.

1. A North Dakota racing commission is established in the office of the secretary of state. The commission consists of the secretary of state and four other members appointed by the governor, with the consent of the senate. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.
2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such

character and reputation as to promote public confidence in the administration of racing in this state. A person who has a financial interest in racing cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.

3. Commission members are entitled to forty dollars per day for compensation, and mileage and expense reimbursement as allowed to other state employees.
4. The secretary of state is the chairman of the commission.

SECTION 3. Director of racing - Appointment - Qualifications - Salary - Duties - Other personnel - Administrative functions.

1. The commission shall appoint a director of racing. The commission shall establish the director's qualifications and salary.
2. The director shall devote full time to the duties of the office. The director is the executive officer of the commission and shall enforce the rules and orders of the commission. The director shall perform other duties the commission prescribes.
3. The director may employ other persons as authorized by the commission.
4. Administrative functions of the commission, except personnel matters, are under the secretary of state's general supervision.

SECTION 4. Duties of commission. The commission shall:

1. Provide for racing under the certificate system.
2. Set racing dates.
3. Adopt rules for effectively preventing the use of any substance, compound items, or combinations of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racehorse, unless specifically authorized by the commission.
4. Supervise and check the making of parimutuel pools, parimutuel machines, and equipment at all races held under the certificate system.
5. Adopt rules governing, restricting, or regulating bids on licensees' concessions and leases on equipment.

6. Consider all proposed extensions, additions, or improvements to the buildings, stables, or tracks on property owned or leased by a licensee.
7. Exclude from racecourses any person who violates any rule of the commission or any law.
8. Determine the cost of inspections performed under subsection 3 of section 5 of this Act and require the licensee to pay that cost.

SECTION 5. Powers of commission. The commission may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records are to be kept.
2. Investigate the operations of any licensee and cause the various places where race meets are held under the certificate system to be visited and inspected at reasonable intervals for the purpose of determining compliance with the rules.
3. Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and horses that are lawfully on a racetrack.
4. License all participants in the racing industry and require and obtain information the commission deems necessary from license applicants.
5. Adopt additional rules under which all horse races are conducted.

SECTION 6. Organizations eligible to conduct racing. Civic and service clubs, charitable, fraternal, religious, and veterans' organizations, and other public-spirited organizations may be licensed to conduct racing as authorized by this Act.

SECTION 7. Issuance of licenses - Applications.

1. On compliance by an applicant with this Act, the commission may issue a license to conduct races.
2. An application for a license to conduct a racing meet must be signed under oath and filed with the commission. The application must contain at least the following:
 - a. The name and post-office address of the applicant.
 - b. The location of the race track and whether it is owned or leased. If the racetrack is leased, a copy of the lease must be included.

- c. A statement of the applicant's previous history and association sufficient to establish that the applicant is an eligible organization.
 - d. The time, place, and number of days the racing meet is proposed to be conducted.
 - e. The type of racing to be conducted.
 - f. Other information the commission requires.
3. At least thirty days before the commission issues or renews a license to conduct races, the applicant must deliver a complete copy of the application to the local jurisdiction governing body. The application to the commission must include a certificate verified by a representative of the applicant, indicating delivery of the application copy to the governing body. If the governing body of the local jurisdiction adopts a resolution disapproving the application for license or renewal and so informs the director within thirty days of receiving a copy of the application, the license to conduct races may not be issued or renewed.

SECTION 8. License authorization and fees.

1. Each license issued under the certificate system must describe the place and track or racecourse at which the licensee may hold races. The authority conferred in a license is limited to the calendar year for which it is issued. Every license must specify the number of days the licensed races may continue, the hours during which racing may be conducted, and the number of races that may be held each day. However, races authorized under this Act may be held only between nine a.m. and twelve midnight.
2. The commission may charge a license fee for racing commensurate with the size and attendance of the race meet. The commission shall remit license fees to the state treasurer. The state treasurer shall place the fees in the operating fund of the tourism division of the economic development commission to pay for the operation and salaries of the commission and its employees.
3. Each applicant for a license under this Act shall give bond payable to this state with good security as approved by the commission. The bond must be in the amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.
4. The commission may grant licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen,

exercise workers, veterinarians, valets, and concessionaires. A license issued under this subsection cannot be valid for more than one calendar year, but the license is valid at all race meetings in which the licensee participates during that year. License fees are as established by the commission.

SECTION 9. Allotment of racing days. If an applicant is eligible to receive a license under this Act, the commission shall fix the racing days that are allotted to that applicant and issue a license for the holding of racing meets. An eligible applicant that has adopted and used regular or approximately regular dates for its events for the past two years is entitled to be allotted those days on request.

SECTION 10. Certificate system - Rules. The certificate system allows a licensee to receive money from any person present at a race who desires to bet on any horse entered in that race. A person betting on a horse to win acquires an interest in the total money bet on all horses in the race, in proportion to the amount of money bet by that person, under rules adopted by the commission. The licensee shall receive such bets and for each bet shall issue a certificate to the bettor on which is at least shown the number of the race, the amount bet, and the number or name of the horse selected by the bettor. The commission may also adopt rules for place, show, quinella, combination, or other types of betting usually connected with racing.

SECTION 11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Special fund - Payment to general fund.

1. For each race held at a racing meet where the average daily amount bet on the total races held exceeds fifty thousand dollars, the licensee shall deduct eighteen and one-fourth percent of the total parimutuel pool bet on the race. Of this amount, the licensee may retain fourteen and one-fourth percent for expenses. The licensee shall pay the remaining four percent to the state treasurer as prescribed by the commission. Of the four percent paid to the state treasurer, up to the first one hundred thousand dollars is to be placed in the operating fund of the tourism division of the economic development commission from which all salaries and expenses of the commission and its employees are to be paid. The remaining funds must be placed in the general fund of the state.
2. For each race held at a meet where the average daily amount bet on the total races held does not exceed fifty thousand dollars, the licensee shall deduct eighteen and one-fourth percent of the total parimutuel pool bet on the individual race. Of this amount, the licensee may retain fifteen and one-fourth percent for expenses. The licensee shall pay the remaining three percent to the state treasurer as prescribed by the commission. Of the three

percent paid to the state treasurer, up to the first one hundred thousand dollars is to be placed in the operating fund of the tourism division of the economic development commission from which all salaries and expenses of the commission and its employees are to be paid, except that the amounts in subsections 1 and 2 of this section may not exceed a total of one hundred thousand dollars. The remaining funds must be placed in the general fund of the state.

3. The licensee shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
4. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 6 of section 53-06.1-01.

SECTION 12. Audits and investigations by state auditor. On request of the commission, the state auditor shall conduct audits and investigate the operations of any licensee. The commission shall reimburse the state auditor for all services rendered.

SECTION 13. Duty of attorney general to participate in certain hearings - Employment of private counsel by commission. The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of this Act. The commission shall reimburse the attorney general for the cost of all services rendered. The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly.

SECTION 14. Denial, suspension, and revocation of licenses - Reasons. The commission may deny, suspend, or revoke licenses under the certificate system and privileges granted by it, and it may terminate racing privileges for just cause. Actions constituting just cause include:

1. Any action or attempted action by a person contrary to any law.
2. Corrupt practices, which include:
 - a. Prearranging or attempting to prearrange the order of finish of a race.
 - b. Failing to properly pay winnings to a bettor or to properly return change to a bettor purchasing a ticket.

- c. Falsifying or manipulating the odds on any entrant in a race.
3. Any violation of the rules of racing adopted by the commission.
 4. Willful falsification or misstatement of fact in an application for racing privileges.
 5. Material false statement to a racing official or to the commission.
 6. Willful disobedience of a commission order or of a lawful order of a racing official other than a commission member.
 7. Continued failure or inability to meet financial obligations connected with racing meets.
 8. Failure or inability to properly maintain a racetrack.

SECTION 15. Revocation, suspension, fine - Procedure. The commission, on proof of violation by a licensee, its agents or employees, of this Act or any rule adopted by the commission may, on reasonable notice to the licensee and after giving the licensee an opportunity to be heard, fine the licensee or revoke or suspend the license. If the license is revoked, the licensee is not eligible to receive another license within twelve months from the date of revocation. Every decision or order of the commission must be made in writing and filed with the director for preservation as a permanent record of the commission. The decision must be signed by the chairman, attested by the director, and dated.

SECTION 16. Performing certain acts without license prohibited - Penalty. A person may not conduct a race unless that person is licensed to do so by the commission. Violation of this section is a class A misdemeanor.

SECTION 17. APPROPRIATION. The commission may accept \$100,000 in grants and donations from, and seek further funding from, the economic development commission and any other source. The amounts so received are appropriated to the commission for defraying the initial costs of administering this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 14, 1987
Filed April 15, 1987

STATE GOVERNMENT

CHAPTER 619

SENATE BILL NO. 2096
(Senators Tallackson, Naaden, Kelly)
(Representatives Myrdal, Schindler)

ENGLISH LANGUAGE

AN ACT establishing English as the official language of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. **English as official language.** The English language is the official language of the state of North Dakota.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 620

HOUSE BILL NO. 1575
(Representatives Kloubec, Strinden, Mertens)
(Senators Olson, Heigaard)

LEGISLATORS' EXPENSE REIMBURSEMENT

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to reimbursement for expenses for members of the legislative assembly; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-20 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day, and is entitled to receive reimbursement for lodging ~~to~~, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip ~~per~~ taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees for travel by motor vehicle. Members of the legislative assembly who do not receive reimbursement for lodging and who do not live in a legislative district completely or partially within the city of Bismarck are entitled to reimbursement at the rate provided for state employees for travel by motor vehicle for necessary travel for not to exceed one round trip taken per day between their residences and the place of meeting of the legislative assembly when it is in session, provided that this reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled shall be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session shall be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member shall receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. If a member dies or resigns from office during the member's term, the member shall be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances shall be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)]. The provisions of this section shall be retroactive to January 1, 1985 1987.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 621

HOUSE BILL NO. 1681
(Strinden, Mertens, Martinson, Schneider)
(Approved by the Committee on Delayed Bills)

LOBBYIST EXPENDITURES

AN ACT to amend and reenact subsection 2 of section 54-05.1-03 of the North Dakota Century Code, relating to reporting of expenditures by lobbyists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-05.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Each person so registering to act as a lobbyist must, on or before December thirty-first in each year registered, file with the secretary of state a detailed report. The report must include a statement as to each expenditure, if any, of twenty-five dollars or more expended on any single occasion during the legislative session or the interim, as the case may be, on any individual in carrying out his work. No state official or agency may require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide a prescribed form for reporting pursuant to this chapter.

Approved April 6, 1987
Filed April 6, 1987

CHAPTER 622

HOUSE BILL NO. 1634
(Representatives Strinden, Kloubec)
(Senator Olson)

ECONOMIC DEVELOPMENT COMMISSION

AN ACT to amend and reenact subsection 1 of section 54-07-01.2, sections 54-34-02, 54-34-03, 54-34-03.1, 54-34-04, 54-34-05.1, and 54-34-06 of the North Dakota Century Code, relating to the membership and duties of the economic development commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Notwithstanding the provisions of sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09.1-02, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, 51-10-13, ~~54-34-03~~, 54-54-02, 55-01-01, 55-06-01, 61-02-04, 61-28-03, and 65-02-01, all members of the following boards and commissions shall, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk stabilization board.
 - c. The dairy products promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The board of pardons.

- h. The state parole board.
- i. The state board of public school education.
- j. The teachers' professional practices commission.
- k. The board of trustees for the teachers' fund for retirement.
- l. The educational broadcasting council.
- m. The state game and fish advisory board.
- n. The health council.
- o. The air pollution control advisory council.
- p. The livestock sanitary board.
- q. The administrative committee on veterans' affairs.
- r. The governor's council on human resources.
- s. The North Dakota trade commission.
- ~~t. The economic development commission.~~
- ~~u.~~ The North Dakota council on the arts.
- ~~v.~~ u. The state historical board.
- ~~w.~~ v. The Yellowstone-Missouri-Fort Union commission.
- ~~x.~~ w. The state water ~~conservation~~ commission.
- ~~y.~~ x. The state water pollution control board.
- ~~z.~~ y. The workmen's compensation bureau.

SECTION 2. AMENDMENT. Section 54-34-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-02. Appointment of director of the economic development commission. The governor, or his designee, economic development commission shall appoint a director of the economic development commission hereinafter called the "director" with the educational qualifications, knowledge, and experience necessary to ensure professional competency in the carrying out of the duties of the director enumerated in section 54-34-06. The director shall serve at the pleasure of the governor commission and shall receive a salary set by the governor commission within the limits of legislative appropriations. The director shall be allowed actual and necessary mileage and travel expenses at the same rate as allowed for other officials of this state officers.

SECTION 3. AMENDMENT. Section 54-34-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-03. ~~Appointment of economic~~ Economic development commission - Membership - Appointment and removal - Expenses. ~~The economic development commission, hereafter called the commission, shall consist~~ consists of the governor as chairman and ~~eight~~ nine members appointed by the governor, with one member ~~to be~~ appointed from each of the ~~seven judicial~~ eight planning districts and one member to be appointed ~~from the state~~ at large to represent minorities. The members ~~shall~~ must be appointed for a term of ~~four~~ five years staggered so that the ~~terms~~ term of ~~two members~~ two members expire at least one member expires each year. ~~Vacancies~~ The governor shall be filled ~~fill vacancies~~ in the same manner as the original appointment, except that vacancies occurring for other than the expiration of a term ~~shall~~ must be filled by appointment for only the remainder of the term of the member causing the vacancy. ~~Appointment~~ The governor shall appoint members to the commission ~~by the governor shall be upon~~ on the basis of the special knowledge ~~or~~ experience, and interest of the ~~each~~ member in the economic development of the state. ~~All members~~ The governor may receive nominations of candidates for appointment to the commission from the private sector and from public and private economic development agencies and organizations in the state in such form as may be required by the governor. Any member of the commission may be removed by the governor for neglect of duty or malfeasance in office. Members of the commission shall be reimbursed may not receive a salary for their services, but are entitled to reimbursement for expenses incurred in attending meetings and otherwise performing official duties at the same rates and in the same manner rate as allowed other state officials officers.

SECTION 4. AMENDMENT. Section 54-34-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-03.1. Initial commission membership. ~~The members of the business and industrial development commission representing the seven judicial districts of the state and serving upon such on the commission on March 26, 1981, the effective date of this Act shall automatically become~~ remain as members of the ~~economic development~~ commission and shall ~~so~~ serve during any unexpired portion of the term for which they were appointed as members of the ~~business and industrial development~~ commission ~~without regard to the judicial district of their residence and shall represent the planning district in which they live.~~ Thereafter, members of the commission ~~shall~~ must be appointed in accordance with the ~~provisions of~~ section 54-34-03.

SECTION 5. AMENDMENT. Section 54-34-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-04. Meeting and duties of commission. ~~The commission shall meet at the call of the governor at least quarterly. Five members~~

of the commission shall constitute a quorum. The governor commission shall designate a vice chairman of the commission. The director shall act as secretary of the commission. The commission shall advise and assist the legislative assembly, the governor, and the director in the performance of the functions, duties, and activities relative to economic development as provided in this chapter. The commission shall report annually to the governor and the legislative assembly concerning the progress, administration, and activities of the commission for the preceding year, including in the report recommendations for legislation or administrative changes necessary or desirable to effectuate the purposes of this chapter.

SECTION 6. AMENDMENT. Section 54-34-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-05.1. Appointment of special committees. The governor, in the governor's discretion, commission may appoint any temporary or special committees as may be desirable to provide assistance in carrying out the provisions of this chapter with regard to limited projects or specialized fields of research and economic development. Members The commission may compensate the members of these committees may at the discretion of the governor be compensated for their expenses and attendance at meetings or in carrying out their duties in the same manner as members of the commission.

SECTION 7. AMENDMENT. Section 54-34-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-06. Duties of the director. The director, under the supervision of the governor commission and subject to legislative appropriation, shall:

1. Appoint, subject to the approval of the commission, such personnel as may be deemed determined necessary to carry out the provisions of this chapter, and to fix their compensation.
2. Plan, execute, and direct a program of publicity, research, and agricultural and industrial promotion which will:
 - a. Attract investors, investment capital, and new residents.
 - b. Foster and promote tourism and international trade.
 - c. Assist in improving the business and agricultural climate of North Dakota to encourage the growth and development of business and industry.
3. Provide for and encourage through the universities and colleges of the state and other public and private

institutions and agencies such projects of research as will promote the economic development of the state.

4. Cooperate with departments and agencies of the federal government and of other states, and with departments, agencies, institutions, and political subdivisions of this state, and with associations, corporations, and individuals upon such terms as may be agreed upon in providing programs of advertising, promotion, or research which will advance the economic development of the state.
5. Receive and accept from any source, including agricultural and industrial development funds of cities and counties, money, property, services, or other things of value, to be held or used for the purpose tendered.
6. Encourage the formation and coordination of the efforts of local development organizations throughout the state; make available to such local development organizations and to cities and the various political subdivisions of the state, such facts, data, and information as may be useful and desirable in their efforts to encourage the location of business and industry within the state.
7. Coordinate the international marketing efforts of the various state agencies and institutions of the state of North Dakota.
8. Request all departments, agencies, institutions, and political subdivisions of this state to give reasonable aid and assistance in carrying out ~~the provisions of~~ this chapter and to use portions of their funds for such purpose.
9. Advise and assist the legislative assembly in the formulation of legislation relative to economic development in the state.
10. To do all things reasonably necessary and proper to realize the benefits and carry out ~~the provisions of~~ this chapter.

Approved April 17, 1987

Filed April 17, 1987

CHAPTER 623

SENATE BILL NO. 2903
(Select Committee on Appropriations)
(At the request of the State Auditor)
(Approved by the Committee on Delayed Bills)

AUDITS OF POLITICAL SUBDIVISIONS

AN ACT to amend and reenact subsection 2 of section 54-10-01 and sections 54-10-13 and 54-10-14 of the North Dakota Century Code, relating to the powers of the state auditor and audit requirements for political subdivisions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-10-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Be vested with the duties, powers, and responsibilities involved in making a complete examination ~~at least~~ once every two years of the books, records, accounting methods, and internal controls of any and all state agencies, including the occupational and professional boards provided for in title 43 and the state bar board, state board of veterinary medical examiners, and all other professional boards created by law. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to all agencies which receive and expend moneys from other than the general fund, unless for good cause the amounts charged are waived by the auditor for a one-year period of time with the waiver subject to annual renewal after proper application has been filed with the auditor. The governing board of any occupational and professional board or commission shall provide for an audit ~~at least~~ once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. When the report is in the form and style as prescribed by the state auditor, the state auditor shall not audit such board or commission. Audits may be conducted at more frequent intervals if requested

by the Governor or Legislative Audit and Fiscal Review Committee.

SECTION 2. AMENDMENT. Section 54-10-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-13. County agencies Political subdivisions - Audits - Fees State auditor powers. The state auditor by his duly appointed deputy auditors or other authorized person or persons shall audit at least once every two years, or at more frequent intervals if the state auditor, in his discretion, deems it advisable, the official financial records, accounts, and proceedings of boards of county commissioners, county auditors, county treasurers, clerks of district court, county judges, registers of deeds, county superintendents of schools, sheriffs, public administrators, governing boards of irrigation districts and flood irrigation districts, clerks or secretaries of said boards, and treasurers of said districts. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to the county agencies in making and otherwise preparing the reports of examinations herein provided for. The fees herein provided shall be paid by the counties and districts examined to the state treasurer, and by him credited to the general fund of the state. Provided, further, that the board of county commissioners may provide for an annual audit by a certified public accountant or licensed public accountant for any or all of the offices and boards set forth in this section, and such audit report shall be in such form and contain such information as the state auditor may require in addition to other information, and in such case the state auditor shall not be required to make the examination heretofore provided for in this section. The number of copies as requested by the state auditor of such audit reports shall be filed with the state auditor by the certified public accountant or licensed public accountant making such audit at the same time that the report is delivered to the officer or board audited, and the board of county commissioners shall not pay the fee for such audit until evidence of such filing is furnished. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of such officers or boards disclosed by such audit reports, and failure to make such corrections shall result in audits being resumed by the state auditor until such irregularities, procedures, or illegal actions are corrected, and fees for such audits, so resumed, shall be paid in accordance with this section shall perform audits of political subdivisions pursuant to section 54-10-14 unless otherwise requested by the governing board, ordered by the governor or on petition pursuant to section 54-10-15, or at the discretion of the state auditor for alleged improprieties.

SECTION 3. AMENDMENT. Section 54-10-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor, by his duly appointed deputy auditors or other authorized agents, shall audit, ~~at least~~ once every two years, except as provided in this section or otherwise by law, the official financial records, accounts, and proceedings of the following governing bodies and officials of the following political subdivisions:

1. Counties.
2. Municipalities.
- 2- 3. Park districts.
- 3- 4. School districts.
- 4- 5. Firemen's relief associations.
- 5- 6. Airport authorities.
- 6- 7. Public libraries.
- 7- 8. Water resource districts.
- 8- 9. Garrison Diversion Conservancy District.
- 9- 10. Rural fire protection districts.
- 10- 11. Special education districts.
- 11- 12. Vocational education centers.
- 12- 13. Correction centers.
- 13- 14. Recreation service districts.
- 14- 15. Weed boards.
16. Irrigation districts.

Audits may be conducted at more frequent intervals if the state auditor, in his discretion, deems it advisable. The state auditor may in lieu of conducting an audit every two years require annual reports from school districts with less than one hundred enrolled students, municipalities with less than three hundred population, and other political subdivisions subject to the provisions of this section, or otherwise provided by law, with less than fifty thousand dollars of annual receipts. The reports shall contain such financial information as the state auditor may request. The state auditor may also make such additional examination or audit as he deems necessary in addition to such report. When a report is required in lieu of an audit, the state auditor upon receiving a petition containing the signatures of not less than ten percent of the qualified electors of the political subdivision voting for the

office of governor at the preceding general election, shall conduct an audit of such political subdivision's books, records, and financial accounts.

The governing board of any political subdivision may provide for an audit ~~annually~~ by a certified public accountant or licensed public accountant, and such report shall be in such form and contain such information as the state auditor may require in addition to other information, and in such case the state auditor shall not be required to make the examination ~~heretofore~~ provided for in this section. The number of copies as requested by the state auditor of such audit reports shall be filed with the state auditor by the certified public accountant or licensed public accountant making such audit at the time that the report of audit is delivered to said political subdivisions, and the governing board of such subdivision shall not pay the fee for such audit until evidence of such filing is furnished. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing boards and officers of such subdivisions disclosed by such audit reports, and failure to make such corrections shall result in audits being resumed by the state auditor until such irregularities, procedures, or illegal actions are corrected and fees for such audits, so resumed, shall be paid in accordance with this section. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to the political subdivisions in ~~making and otherwise~~ preparing the ~~reports of audits herein provided for~~ audit report. All fees for the audits ~~herein provided performed by the state auditor~~ shall be paid by the subdivision audited to the state treasurer and ~~by him~~ credited to the general fund of the state.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on December 15, 1986.

Approved December 5, 1986

Filed December 8, 1986

CHAPTER 624

HOUSE BILL NO. 1114
(Committee on State and Federal Government)
(At the request of the State Auditor)

AUDITOR'S WORKING PAPERS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to confidentiality of the state auditor's working papers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

State auditor's working papers - Confidential. Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. The issued audit report is public information. The working papers of an issued audit report shall be public. At the discretion of the state auditor, all or a portion of the working papers of an issued audit report may be declared confidential. Such a declaration of confidentiality shall state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when it will be made public.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 625

SENATE BILL NO. 2505
(Senators Kelsh, Mushik, Holmberg)
(Representatives Opedahl, Rydell)

TREASURER ASSISTANCE TO CENTENNIAL COMMISSION

AN ACT authorizing the state treasurer to provide services to the North Dakota centennial commission to facilitate the centennial commission in successfully administering its various programs; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. The state treasurer is authorized to provide services as time permits for the North Dakota centennial commission to successfully accomplish its various programs.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 626

SENATE BILL NO. 2054
(Legislative Council)
(Interim Judiciary Committee)

DEFENSE AND INDEMNIFICATION OF JUDGES

AN ACT to provide for indemnification and legal defense for judicial officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Judicial officers - Legal defense - Indemnification. The attorney general shall appear and defend any supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, county court judge, judicial referee, or juvenile supervisor of this state in any action founded upon an act or omission arising out of performance of an official duty. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the judicial officer, the attorney general shall employ a special assistant attorney general to represent the judicial officer. The state shall indemnify the supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, county court judge, judicial referee, or juvenile supervisor of this state for all reasonable costs, including attorney fees, incurred by or awarded against the judicial officer in the action.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 627

SENATE BILL NO. 2047
(Legislative Council)
(Interim Indian Jurisdiction Committee)

ATTORNEY GENERAL'S RESERVATION INVESTIGATIONS

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to investigations on Indian reservations by the attorney general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Attorney general to make investigation on Indian reservation - Expenses.
The attorney general may make a full and complete investigation of any complaint alleging the deprivation of any constitutional, civil, or legal right of an individual residing on an Indian reservation upon the written request of the state's attorney of the county of residence of the aggrieved individual. The attorney general may conduct and take full charge of any criminal prosecution that results from the investigation. The necessary expenses incurred in making the investigation or in prosecuting any resulting case, as determined by the attorney general, must be allowed and paid by the county in which the investigation was requested in the same manner in which claims against the county are allowed and paid.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 628

SENATE BILL NO. 2181
(Committee on Judiciary)
(At the request of the Attorney General)

ASSISTANT ATTORNEY GENERAL BILLING

AN ACT to amend and reenact section 54-12-08 of the North Dakota Century Code, relating to assistant and special assistant attorneys general and to billing arrangements for legal services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-08. Special Assistant and special assistant attorneys general - Appointment - Revocation - Compensation. The attorney general also, when he deems it necessary, may after consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected appoint assistant or special assistant attorneys general, and no state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency shall employ legal counsel, and no person shall act as legal counsel, in any matter, action or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon appointment by the attorney general. The appointment shall be in writing. The powers conferred upon such special assistant attorneys general shall be the same as are exercised by the regular assistant attorneys general, when such powers are not limited specifically by the terms of such appointment. Any such appointment shall be revocable at the pleasure of the attorney general. It may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, it shall be paid out of the funds appropriated therefor. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services except for those payments required of the department of human services, state department of health, and the state hospital.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 629

SENATE BILL NO. 2249
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

PASS-THROUGH FEDERAL FUNDS

AN ACT to amend and reenact section 54-16-04.1 of the North Dakota Century Code, relating to emergency commission authorization for pass-through federal funds between state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-16-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-16-04.1. May authorize acceptance and disbursement of certain moneys. The emergency commission with the advice and counsel of the executive office of the budget may authorize the state treasurer to receive, between legislative sessions, any moneys for new programs or continuation of existing programs not appropriated by the legislative assembly that are made available by the federal government, or any agency thereof, which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize pass-through federal funds from one state agency to another state agency. The emergency commission may authorize any state agency, department, board, or institution to expend such moneys from the date such moneys become available until July first following the next regular legislative session; provided such expenditures must be consistent with state law and with the terms of the grant, and provided, further, that the program shall not commit the legislative assembly for matching funds for future bienniums unless the program has first been approved by the legislative assembly. No department, institution, or agency shall expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 630

HOUSE BILL NO. 1154
(Committee on Industry, Business and Labor)
(At the request of the Housing Finance Agency)

HOUSING REVENUE BOND CEILING REPEAL

AN ACT to repeal section 54-17-07.5 of the North Dakota Century Code, relating to the allocation of the housing revenue bond issuance ceiling of the state under the Mortgage Subsidy Bond Tax Act of 1980 which was repealed by the Tax Reform Act of 1986.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-17-07.5 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 631

HOUSE BILL NO. 1200
(Committee on Industry, Business and Labor)
(At the request of the Bank of North Dakota)

STUDENT LOAN TRUSTS

AN ACT to amend and reenact sections 54-17-24 and 54-17-25 of the North Dakota Century Code, relating to the state student loan trusts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-24 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-24. State trusts created. The industrial commission is hereby authorized and directed to acquire and to hold in separate trusts (1) all unpaid United States government guaranteed or reinsured student loans and (2) North Dakota guaranteed student loans, belonging to the state of North Dakota or to any of its agencies, departments, or institutions which may be endorsed or assigned to it, such guaranteed student loans held in the trusts as security for bonds of the state to be issued as and in the manner the commission shall decide. All guaranteed student loans so held in the trusts and the collections therefrom and the increments thereto shall be held in special funds as the source of payment of bonds of North Dakota to be issued, none of which bonds shall constitute indebtedness of the state. The term "student" for the purposes of this section and section 54-17-25 includes a parent borrower under chapter 15-62.1.

SECTION 2. AMENDMENT. Section 54-17-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable

to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal ~~and North Dakota~~ income taxes, as the commission shall determine to be for the public good. The bonds shall be a paramount charge upon a sufficient designated portion of the resources of the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds shall have all of the qualities and incidents of negotiable paper and shall not be subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds shall be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of (1) United States government guaranteed or reinsured or (2) North Dakota guaranteed student loans, and shall respectively so recite. They shall not be indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of ~~section 103(e)~~ of the Internal Revenue Code of 1954, as amended and redesignated as the Internal Revenue Code of 1986 [Pub. L. 99-54], and as it may be amended from time to time, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965, as amended, as the commission shall, in its discretion, deem advisable.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 632

HOUSE BILL NO. 1032
(Legislative Council)
(Interim Budget Committee on Higher Education)

STATE BUILDING AUTHORITY

AN ACT to authorize the industrial commission to issue evidences of indebtedness for projects authorized by the fiftieth legislative assembly; to create and enact a new section to chapter 54-17.2 of the North Dakota Century Code, relating to evidences of indebtedness issued by the industrial commission and continued authority of the commission as the North Dakota building authority; to amend and reenact section 22 of chapter 571 of the 1985 Session Laws of North Dakota, relating to the continuing appropriation of moneys related to the projects; and to repeal section 21 of chapter 571 of the 1985 Session Laws of North Dakota, relating to projects authorized by the forty-ninth legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-17.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Evidences of indebtedness conditions - Continued authority. The commission may issue evidences of indebtedness subject to the condition that lease rental payments shall begin no earlier than the first business day of the biennium following the biennium of issuance. Although the authority to issue evidences of indebtedness for specific projects may terminate, the commission may exercise all other powers granted to the commission under this chapter and may comply with any covenants entered into before the applicable termination date.

SECTION 2. AMENDMENT. Section 22 of chapter 571 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 22. CONTINUING APPROPRIATION. The moneys received by the industrial commission and the state agencies and institutions from the sale of evidences of indebtedness, and lease rental payments, and moneys received by the industrial commission or the

state agencies and institutions from revenue generated by projects authorized under section 21 of this Act by the legislative assembly are hereby appropriated as a continuing appropriation for the acquisition of these authorized projects and the payment of lease rentals for these projects.

SECTION 3. AUTHORITY TO ISSUE EVIDENCES OF INDEBTEDNESS. The industrial commission may issue, during the biennium beginning July 1, 1987, and ending June 30, 1989, evidences of indebtedness under North Dakota Century Code chapter 54-17.2 for the projects specifically authorized and declared to be in the public interest by the fiftieth legislative assembly, with that portion of the project costs associated with the construction payable with proceeds of the evidences of indebtedness in an amount up to but not exceeding the amount approved by the fiftieth legislative assembly.

SECTION 4. REPEAL. Section 21 of chapter 571 of the 1985 Session Laws of North Dakota is hereby repealed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 633

SENATE BILL NO. 2256
(Committee on State and Federal Government)
(At the request of the North Dakota Mill and Elevator Association)

MILL AND ELEVATOR BUSINESS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 54-18 of the North Dakota Century Code, relating to confidentiality of certain North Dakota mill and elevator and export trading company business.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality exemption.

1. The industrial commission may provide for the confidentiality of trade secrets and certain commercial and financial information related to specific business transactions of the North Dakota mill and elevator or any export trading company with which the mill and elevator participates, including subsidiaries of the North Dakota mill and elevator.
2. Information may be designated as confidential only when such information would impair the mill and elevator or export trading company's ability to obtain necessary information in the future or cause substantial harm to their competitive position, or when such information would cause substantial harm to the privacy or competitive position of a business partner of the mill and elevator or export trading company.
3. Only information regarding specific business transactions and concerning trade secrets as that term is defined in subsection 4 of section 47-25.1-01, commercial information such as bids, prices for products and commodities, quantities, market strategies, distribution channels, and patterns of competition, or financial information of business partners of the mill and elevator or export trading company may be designated as confidential.

4. Before any information is designated as confidential pursuant to this section, a request by the mill and elevator or export trading company for designation of confidentiality shall be made public at least five days before the industrial commission acts to designate information as confidential. Any person may protest the requested designation of confidentiality in writing or orally with the industrial commission, or seek an injunction to prevent the designation of confidentiality in the district court. The request for confidentiality shall state the general nature and type of information to be protected, but need not state the name of any business partner or the specific substance of the information which is the subject of the request.

5. Any information designated as confidential pursuant to this section shall not remain confidential when the transaction is reported to the industrial commission or discussed by the industrial commission at a regular or special meeting, unless the transaction is continuing and disclosure of the information may jeopardize the successful completion of the transaction, or it is information concerning the business partner of the mill and elevator or export trading company and disclosure of information would impair the mill and elevator or export trading company's ability to obtain necessary information in the future or cause substantial harm to the privacy or competitive position of the business partner.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 634

SENATE BILL NO. 2373
(D. Meyer)

INMATE TRANSFERS

AN ACT to amend and reenact section 54-21-25 of the North Dakota Century Code, relating to the director of institution's authority to transfer adult inmates and juvenile delinquents; and to repeal 12-47-35 of the North Dakota Century Code, relating to the governor's authority to transfer adult inmates to the federal government.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-21-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-21-25. Authority to contract with other governmental agencies for prisoners and juvenile delinquents. If the director of institutions determines that suitable state facilities or services are not available for adult inmates or juvenile delinquents under his control he may contract for same with the proper authorities of the United States, Canada, and any of its governmental subdivisions, another state, another agency in this state or a political subdivision of this state, or with any private or public correctional or treatment facility or agency. The director may also contract, without cost to the state, to provide services or facilities for persons held by any of the jurisdictions mentioned in this section. An adult inmate or juvenile delinquent who is considered for transfer to another jurisdiction as herein provided, and who as an adult or as parent or guardian of a juvenile does not consent to the transfer, will be given notice of the pending transfer and an administrative hearing a review by an institutional staff board including at least one member from the treatment staff, the security or housing staff, the administrative staff, and chaired by an individual designated by the director of institutions to determine the need and justification for a transfer. The findings of the review board will, if appropriate, be given to the adult inmate or juvenile delinquent or a representative or guardian, and in the case of adults, to the pardon board, and in the case of juveniles, to the designated juvenile court staff for their approval of the requested transfer. If a treaty is in effect between the

United States and a foreign country for the transfer and exchange of offenders, the director of institutions, upon recommendation of the warden and the approval of the governor; may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.

SECTION 2. REPEAL. Section 12-47-35 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 635

HOUSE BILL NO. 1109
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

CAPITOL SPACE STUDIES

AN ACT allowing the director of institutions to conduct space studies and allocate office space to the executive branch staff located on the capitol grounds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Space utilization studies - Office space allocation. The director of institutions shall:

1. Conduct a periodic comprehensive space utilization study of all executive branch staff located within the facilities on the capitol grounds.
2. Develop a space allocation and design policy which will consider space equalization and maximize the effective use of public facilities in a cost-effective manner.
3. Allocate and assign office space, based upon space utilization studies and the established policies, guidelines, standards, and procedures, to all executive branch staff housed and working in facilities on the capitol grounds.
4. Include in developing standards and criteria to be used in making space allocations, considerations regarding equipment; work stations; private offices; conference rooms; reception areas; vaults; necessary arrangements of dividers, doors, and walls to increase adequate air circulation; telephones; lighting; and heating in the utilization of available space.
5. Be consulted, and the director's approval obtained, before any change is made within any assigned and allocated space, and before any structural alteration is made.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 636

HOUSE BILL NO. 1471
(Representatives G. Berg, Rice, Wald)
(Senators Stromme, Thane, Waldera)

STATE BUILDING CODE

AN ACT to amend and reenact section 54-21.3-03 of the North Dakota Century Code, relating to the state building code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-21.3-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-21.3-03. State building code - Amendments.

1. The state building code ~~shall consist~~ consists of the 1982 1985 Uniform Building Code with any existing ~~appendices~~ and supplements including the Uniform Mechanical Code with any existing ~~appendices~~ and supplements as referenced by the Uniform Building Code. This code ~~shall~~ must be implemented by and may be amended by rules adopted by the director of the office of management and budget ~~pursuant to~~ under chapter 28-32.
2. For the purposes of manufactured homes, the state building code ~~shall consist~~ consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].
3. The state building code may be amended by cities, townships, and counties to conform with local needs, ~~provided, however,~~ except that the standards established by amendment under this subsection must meet or exceed those of the state building code.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 637

HOUSE BILL NO. 1152
(Committee on Human Services and Veterans Affairs)
(At the request of the Governor and the Attorney General)

LOST, RUNAWAY, OR MISSING PERSONS

AN ACT to create and enact a new section to chapter 54-23 of the North Dakota Century Code, relating to the efforts of law enforcement agencies in locating lost or runaway children and missing persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Lost or runaway children and missing persons. The state radio department shall:

1. Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or runaway children and missing persons. The state radio department shall implement a data exchange system to compile, to maintain, and to make available for dissemination to North Dakota and to out-of-state law enforcement agencies, descriptive information which can assist appropriate agencies in recovering lost or runaway children and missing persons.
2. Establish contacts and exchange information regarding lost or runaway children and missing persons with the national crime information center.
3. Notify all enforcement agencies that reports of lost or runaway children and missing persons shall be entered as soon as the minimum level of data specified by the state radio department is available to the reporting agency and that no waiting period for entry of such data exists. If the enforcement agency is unable to enter the data, the state radio department shall immediately upon notification enter the information into the national crime information center file.

4. Compile and retain information regarding lost or runaway children or missing persons in a separate file, in a manner that allows the information to be used by law enforcement and other agencies deemed appropriate by the state radio department, for investigative purposes. The enforcement agency shall be responsible for maintaining the disposition of the case and shall periodically review the case with the reporting party and the state radio department to ensure all available information is included and to determine the current status of the case.
5. Provide prompt confirmation of the receipt and entry of the lost or runaway children and missing persons report into the file system to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection 6.
6. Allow any parent, guardian, or identified family member to submit a missing persons report to the state radio department which will be included in the state radio department file system and transmitted to the national crime information center, if they are unable to receive services from the local law enforcement agency.
7. Compile and maintain a historical data repository relating to missing persons for all of the following purposes:
 - a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of missing persons.
 - b. To provide a factual and statistical base for research that would address the problem of lost or runaway children and missing persons.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 638

HOUSE BILL NO. 1596 (Moore)

BUDGET STABILIZATION FUND

AN ACT to provide for the creation of the budget stabilization fund as a special fund in the state treasury, to provide for the deposit of revenues in the budget stabilization fund, and to provide for transfers from the budget stabilization fund to the state general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Budget stabilization fund. The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than fifteen percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

SECTION 2. Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 1 of this Act, any amount in the state general fund in excess of forty million dollars at the end of any biennium shall be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

SECTION 3. Transfers and expenditures from budget stabilization fund. If the director of the office of management and budget projects that general fund revenues for the biennium will be at least five percent less than estimated by the most recently adjourned special or regular session of the legislative assembly, and if the governor orders a transfer, the state treasurer shall transfer the appropriate funds from the budget stabilization fund to the state

general fund to offset the decrease in general fund revenues. The amount transferred from the budget stabilization fund upon order of the governor may not exceed the difference between an amount five percent below the general fund revenue projections for the biennium of the most recently adjourned special or regular session of the legislative assembly and the general fund revenue projections for the biennium by the director of the office of management and budget. The amount transferred from the budget stabilization fund upon order of the governor to the state general fund may be expended within the limits of legislative guidelines and general fund appropriations of the most recently adjourned special or regular session of the legislative assembly. Moneys in the budget stabilization fund may not be appropriated or expended except as provided in this section, but the legislative assembly may provide for transfer of all or a portion of the moneys in the budget stabilization fund to the common schools trust fund established under section 1 of article IX of the Constitution of North Dakota.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 639

HOUSE BILL NO. 1543
(Representatives Thompson, Gerntholz, Ulmer)
(Senators Nelson, Shea)

VENTURE CAPITAL NETWORK

AN ACT to direct the economic development commission to establish a venture capital network as a clearinghouse for information on capital investment opportunities in the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. **Statement of purpose.** The purpose of this Act is to improve the dissemination of information regarding informal investment opportunities to potential investors and entrepreneurs, and thereby stimulate the growth of small businesses in the state.

SECTION 2. **Economic development commission to establish venture capital network - Duties and functions.** The economic development commission may establish, from funds appropriated to or otherwise available to the commission, the venture capital network as a clearinghouse for information on informal risk capital investment opportunities in the state. The economic development commission may:

1. Enter into service contracts on a competitive bid basis with public and private agencies, institutions, organizations, and individuals for the purpose of establishing and operating the venture capital network.
2. Receive and approve contract proposals for the purpose of establishing the venture capital network.
3. Solicit the support and contributions of public and private agencies, organizations, institutions, and individuals.
4. Accept and administer contributions for the purpose of operating the venture capital network.
5. Advertise and promote the venture capital network.

SECTION 3. **Duties and functions of venture capital network.** The venture capital network may:

1. Solicit, compile, profile, and maintain current information describing opportunities for risk capital investment in new or emerging business ventures.
2. Identify active informal investors and profile their distinguishing investment objectives.
3. Provide, for a reasonable fee, a timely, confidential, and objective referral system serving both entrepreneurs and investors.
4. Maintain statistics on the operation of the venture capital network, including the number of profiled entrepreneurs and investors, referrals, and referrals resulting in investment.

SECTION 4. Limitations.

1. The venture capital network may not serve any fiduciary, advisory, or evaluative function in making referrals.
2. The remedies and causes of action provided under the securities laws of the United States and this state apply to any conduct or activity of the venture capital network.

SECTION 5. Private sponsor. The economic development commission may endeavor to locate a private sector sponsor or group of sponsors to assume administration of the venture capital network.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 640

SENATE BILL NO. 2313
(Senator Nalewaja)
(Representative Strinden)

GORDON AAMOTH INDIAN DEVELOPMENT FUND

AN ACT to amend and reenact sections 54-34.2-01, 54-34.2-02, and 54-34.2-04 of the North Dakota Century Code, relating to a change in the name of the Indian development fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-34.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34.2-01. Gordon Aamoth Indian development fund - Administration. The North Dakota Indian affairs commission shall administer the Gordon Aamoth Indian development fund as provided in this chapter.

SECTION 2. AMENDMENT. Section 54-34.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34.2-02. Purpose. It is declared that the Indian people of North Dakota need the assistance of their state to take full advantage of the opportunities they have to improve their economic well-being. It is further declared that increased economic strength and stability among the Indian people of North Dakota are clearly in the best interests of the entire state. Therefore, the Gordon Aamoth Indian development fund is created to provide matching funds for the Indian people of North Dakota to take full advantage of the opportunities available to them.

SECTION 3. AMENDMENT. Section 54-34.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34.2-04. Development project eligibility. Moneys from the Gordon Aamoth Indian development fund shall be used only for state or local matching funds as may be required by a federal, tribal, or private agency for participation in Indian development projects. Reservation development projects must be approved by a tribal council. Off-reservation development projects must be approved by the North Dakota Indian affairs commission.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 641

HOUSE BILL NO. 1680
(Martinson)

(Approved by the Committee on Delayed Bills)

RETIREMENT ACTUARIAL REPORT COSTS

AN ACT to amend and reenact subdivision a of subsection 2 of section 54-35-02.4 of the North Dakota Century Code, relating to payment of costs of actuarial reports to the legislative council's committee on public employees retirement programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 54-35-02.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Enter into contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. However, each retirement program shall pay, from its retirement fund and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that retirement program.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 642

SENATE BILL NO. 2035
(Legislative Council)
(Interim Agriculture Committee)

WETLANDS POLICY

AN ACT relating to wetlands; to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to the composition of and duties of the Garrison overview committee; to repeal section 61-16.1-52 of the North Dakota Century Code and section 61-16.1-41 of the North Dakota Century Code, as amended by section 5 of chapter 665 of the 1985 Session Laws, relating to drainage permits and closing drains; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-35-02.7. Garrison diversion overview committee - Duties. The legislative council shall create a legislative council committee entitled the Garrison diversion overview committee. The committee shall consist of the majority and minority leaders and their assistants from the house and senate, the speaker of the house, the president pro tempore of the senate selected at the end of the immediately preceding legislative session, and the chairmen of the house and senate standing committees on natural resources, and the chairmen of the house and senate standing committees on agriculture. If a member of the committee named in this section is unable to serve on the committee, the chairman of the legislative council may appoint another member of the legislative assembly to fill the vacancy. The committee shall be responsible for legislative overview of the Garrison diversion project and related matters; and for any necessary discussions with adjacent states on water-related topics. Staff services for the committee shall be provided by the legislative council staff. The committee shall report to the legislative council in the same manner as do other interim legislative council committees.

SECTION 2. Legislative policy and intent. It is the policy of the legislative assembly that water is one of North Dakota's most

important natural resources, and the protection, development, and management of North Dakota's water resources is essential for the long-term public health, safety, general welfare, and economic security of North Dakota and its citizens.

The legislative assembly finds that agriculture is the most important industry in North Dakota and that agricultural concerns must be accommodated in the protection of wetlands. Wetlands can be a hindrance to farming practices. Even though property taxes are generally paid on such lands, wetlands provide limited economic return to the landowner. Wetland policies can obstruct water development and water management projects, and can affect other developments.

The legislative assembly finds that the primary reason wetlands are considered important is because wetlands provide the habitat base for the production and maintenance of waterfowl. The legislative assembly also finds that wetlands can moderate the water flow and have value as natural flood control mechanisms, can aid in water purification by trapping, filtering, and storing sediment and other pollutants and by recycling nutrients, and can serve as ground water recharge and discharge areas. Wetlands also function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species, and provide vital habitat for resident wildlife. Wetlands also can provide scientific, aesthetic, and recreational benefits. The legislative assembly therefore concludes that wetlands should be protected and preserved.

In view of the legislative findings and conclusions of the importance of wetlands, water development and management, and agriculture in North Dakota, it is hereby declared to be the wetlands policy of this state that:

1. Water development and wetland preservation activities should be balanced to protect and accommodate agriculture, water, and wetland interests and objectives.
2. Programs protecting and preserving wetlands shall provide adequate compensation to the landowner and must provide periodic reevaluation of compensation to the landowner. Annual payments are encouraged as an option for landowners.
3. Land, wetland, or water acquisition for waterfowl production areas, wildlife refuges, or other wildlife, waterfowl, or wetland protection purposes may not be acquired through the exercise of the right of eminent domain.
4. When land is removed from the tax base to protect wetlands, replacement payments must be made by the entity which purchases the land so that the amount of money that

would otherwise be received in taxes if such land was not removed from the tax base is not diminished.

SECTION 3. Definitions. In sections 2 through 12 of this Act, unless the context or subject matter otherwise provides:

1. "Commission" means the state water commission.
2. "Commissioner" means the commissioner of the game and fish department.
3. "Department" means the game and fish department.
4. "District" means a water resource district.
5. "Manmade wetland" means new or expanded water areas, or any portion thereof, created by excavation, diking, damming, or diversion, and determined by the state engineer and the game and fish commissioner to have material wildlife values.
6. "Person" means any person, firm, partnership, association, corporation, agency, or any other private or governmental organization which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
7. "Replacement wetland" means either restoration of previously drained natural wetland or manmade wetlands which are not used for mitigation for any other project.
8. "Sheetwater" means shallow water from any source that floods land not normally subject to standing water.
9. "State engineer" means the state engineer appointed by the state water commission pursuant to section 61-03-01.
10. "Water resource board" means the water resource district's board of managers.
11. "Wetland" means a natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It shall not include sheetwater.

SECTION 4. Permit to drain waters required - Replacement of wetlands - Downstream impacts - Penalty. Any person, before draining water from a wetland, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application shall be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the wetland for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or

interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until the state water resources policy has been considered and an investigation discloses that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. In addition to the above requirements of this section, the state engineer and the commissioner must jointly find that the wetland acres proposed to be drained will be replaced by an equal acreage of replacement wetlands, or through debits to the wetland bank as provided in section 6 of this Act, before any permit for drainage can be approved by the state engineer or water resource board. The provisions of this section do not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer, for which mitigation is required as part of such project.

Any person draining, or causing to be drained, water of a wetland, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, is guilty of an infraction, and shall be required to restore the wetland so drained in accordance with sections 2 through 12 of this Act. The state engineer may adopt rules for temporary permits for emergency drainage.

SECTION 5. Administration - Rulemaking authority - Guidelines. The state engineer and, where specified, the commissioner shall adopt rules to implement sections 2 through 12 of this Act, including rules for procedure. The rules must be consistent with the following guidelines and the other provisions of sections 2 through 12 of this Act:

1. The requirement that wetlands proposed to be drained must be replaced by an equal acreage of replacement wetlands is not applicable to sheetwater, regardless of the area covered by sheetwater.
2. Purchase, easement, lease, or other acquisition that is necessary to comply with sections 2 through 12 of this Act shall be limited to willing sellers. When land is removed from the tax base to protect wetlands, replacement payments shall be made by the entity which purchases the land so that the amount of money that would otherwise be received in taxes if such land was not removed from the tax base is not diminished.

3. The state engineer and the commissioner shall jointly determine whether the number of replacement wetland acres comply with the replacement requirements of sections 2 through 12 of this Act. The area of a wetland must be jointly determined by the normal water level. It is not necessary to replace wetlands proposed to be drained with restored wetlands of the same type or classification.
4. Any person who proposes to drain a wetland for which a permit is required shall pay ten percent of the cost of acquisition, easement, lease, and construction of replacement wetlands. The other ninety percent must be paid by either federal, state, or private interests, or any combination thereof. Any person may pay more than ten percent if that person desires. The cost of acquisition for replacement acres must be determined by average costs of wetland acres placed in the wetlands bank, as prescribed by the state engineer and the commissioner. Federal, state, and private wildlife and water entities shall cooperate and work together to locate, make contacts with landowners, do appraisals, and perform other tasks necessary for lease, purchase, or other acquisition to meet the replacement requirements of sections 2 through 12 of this Act.
5. In order to satisfy the replacement of wetlands requirement, manmade wetlands with material wildlife values, or any portion thereof, as determined by the state engineer and the commissioner, are eligible along with restoration of drained natural wetlands to comply with the replacement of wetlands requirement.
6. The replacement of wetlands requirement for each drainage proposal or project must be accomplished with approximately fifty percent of the replacement wetlands being located in the county or contiguous counties in which the proposed drainage is located, and with the other approximately fifty percent of replacement wetlands being located anywhere in this state. If the state engineer and the commissioner jointly find that replacement wetland acres are not available in the county or contiguous counties where the proposed drainage is located, replacement wetlands may be obtained anywhere in the same biotic area.
7. Any purchase, easement, lease, or other acquisition under sections 2 through 12 of this Act may not obstruct the natural or existing flow of water of any natural watercourse or artificial channel to the detriment of any upstream or downstream landowner.

SECTION 6. Wetlands bank. The state engineer and the commissioner shall jointly establish a wetlands bank. The records of acreages of replacement wetlands debited from and credited to

such bank must be maintained by the state engineer. The acreages of all replacement wetlands constructed after January 1, 1987, must be carried as a credit in such bank. However, any unauthorized drainage constructed after July 1, 1975, which is closed or restored as a result of final enforcement action pursuant to section 8 of this Act, may not be credited to the wetlands bank. The acreages of all wetlands drained after January 1, 1987, except those projects for which permits were applied for prior to January 1, 1987, must be charged as a debit against acreage credit balances. No more than two thousand five hundred acres may be carried as a debit balance to the wetlands bank, except for drainage of wetlands for which a permit is not required. Wetlands drained during surface coal mining operations may not be charged as a debt against acreage credit balances.

SECTION 7. Uniform wetlands classification. The state engineer and the commissioner shall establish a uniform classification system of wetlands. All federal, state, and local entities shall follow this classification system when referring to wetlands in this state.

SECTION 8. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. A complaint must be filed on a form made available by the state engineer. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and shall state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the board shall determine, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of

the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided under sections 61-16.1-54 through 61-16.1-57. A hearing as provided for in this section is not a prerequisite to such an appeal.

SECTION 9. Appeal of board decisions - State engineer review - Closing of noncomplying drains. The board shall make the decision required by section 8 of this Act within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to the nonappealing party. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file such complaint with the state engineer. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination.

If the state engineer determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the drainage complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the state engineer shall determine, but not less than thirty days, the state engineer shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, against the property of the landowner responsible. The notice from the state engineer must state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section shall be a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report shall be forwarded to the board and it shall include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within such reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are

levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for drainage constructed after January 1, 1987.

SECTION 10. Wetlands replacement fund - Continuing appropriation. There is hereby created a special revolving wetlands replacement fund in the state treasury to which funds received by the commissioner pursuant to sections 2 through 12 of this Act must be deposited. The commissioner is authorized to receive funds for the wetlands replacement fund from any private or public source. The commissioner shall work with the governor, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop additional funding to implement sections 2 through 12 of this Act. All funds received from any source, not including state revenues, are hereby appropriated to the commissioner, and may be expended for the purpose of implementing sections 2 through 12 of this Act, including acquisition, easement, lease, and construction of replacement wetlands.

SECTION 11. Exemption. The wetland replacement requirements of sections 2 through 12 of this Act do not apply to surface coal mining operations until reclamation of the wetland area begins pursuant to chapter 38-14.1.

SECTION 12. Application of prior law. Sections 2 through 12 of this Act do not apply to drainage applications submitted, or to drainage violations committed, prior to January 1, 1987. Procedures for and prosecutions of such activities are governed by prior law which is continued in effect for that purpose.

SECTION 13. REPEAL. Section 61-16.1-52 of the North Dakota Century Code and section 61-16.1-41 of the North Dakota Century Code, as amended by section 5 of chapter 665 of the 1985 Session Laws, are hereby repealed.

SECTION 14. EFFECTIVE DATE. The replacement of wetlands requirement in sections 4 and 5 of this Act does not take effect until July 1, 1989. Until July 1, 1989, the drainage of type IV and V wetlands, as defined in U.S. fish and wildlife service circular 39 (1971 edition) is not permitted, except for permit applications submitted prior to January 1, 1987, or unless replaced in accordance with the provisions of sections 2 through 12 of this Act.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 643

SENATE BILL NO. 2046
(Legislative Council)
(Interim Indian Jurisdiction Committee)

INDIAN AFFAIRS COMMISSION

AN ACT to amend and reenact section 54-36-01 of the North Dakota Century Code, relating to the membership of the Indian affairs commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-36-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-36-01. Commission - Members - Officers - Expenses of members. The North Dakota Indian affairs commission shall consist of the governor; attorney general; executive director of the department of human services; state health officer; director of job service North Dakota; the tribal chairmen of the Standing Rock, Fort Berthold, Fort Totten, and Turtle Mountain Indian Reservations or their designees; one other representative of each reservation appointed by the tribal council; a representative of the North Dakota county commissioners' association who lives on or adjacent to an Indian reservation; a representative of the league of North Dakota cities; three members at large who shall be at least one-fourth degree of Indian blood appointed by the governor; and a representative of each house of the legislative assembly who shall be chosen on a bipartisan basis by the presiding officer of each house. The commission may call upon the director of the economic development commission for consultation upon business and industrial matters involved in the operation of the commission. The governor or his authorized representative shall act as chairman of the commission and the commission shall select one of its members as secretary. All members of the commission or their designees shall receive the mileage and expenses allowed state officers which shall be paid from the appropriation made to such commission except mileage and expenses of state officials shall be paid from the appropriation for the department they represent.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 644

SENATE BILL NO. 2190
(Committee on Political Subdivisions)
(At the request of the Governor)

REGIONAL PLANNING AND DEVELOPMENT COUNCILS

AN ACT to amend and reenact sections 54-40.1-01, 54-40.1-02, subsection 1 of section 54-40.1-03, and section 54-40.1-05 of the North Dakota Century Code, relating to regional planning and development councils.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40.1-01. Legislative findings and purpose. The legislative assembly finds that the citizens of the state have a fundamental interest in the orderly development of the state and its resources. This finding recognizes the fact that the mobility of the population within and without the state presents problems which cannot always be met by individual counties or cities and that local government planning can be strengthened when aided by studies and planning of both a statewide and regional character.

The legislative assembly further finds that the state has a positive interest in the establishment, preparation, and maintenance of a long-term, continuing, comprehensive planning process for the physical, social, and economic development of the state and each of its regions to serve as a guide for activities of state and local governmental units.

It is the purpose of this chapter to establish a consistent, comprehensive statewide policy for planning, economic development, program operations, coordination, and related cooperative activities of state and local governmental units and to enhance the ability of and opportunity for local governmental units to resolve issues and problems transcending their individual boundaries. In furtherance of this purpose, the legislative assembly finds that the governor, through the office of intergovernmental assistance economic development commission, is required to assure orderly and harmonious

coordination of state and local plans and programs with federal, state, and regional planning and programming.

SECTION 2. AMENDMENT. Section 54-40.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "City" means any city incorporated under the laws of this state.
2. "Executive officer" means the mayor in council cities or modern council cities and the president of the board of city commissioners in commission cities.
3. "Governing body" means the city council or the board of city commissioners or the board of county commissioners.
4. "Industry" includes agriculture and business.
5. "Member-at-large" means a person who represents the general citizenry of the county.
6. "Minority group" means any identifiable group of people, regardless of numerical size, whose members are denied or limited in employment, education, or training opportunities because of sex, race, creed, color, religion, national origin, or low income.
7. "Office" means the office of intergovernmental assistance economic development commission.
8. "Organized local development corporation" means any group organized for the purpose of promoting economic development which has filed for incorporation as such with the secretary of state's office.
9. "Region" means the area delineated by executive order of the governor.
- 9- 10. "Regional comprehensive plan" means a long-range guide for the economic, physical, and social development of a region which identifies regional goals, objectives, and opportunities and embodies the policies of the regional council.
- 10- 11. "Regional council" means the council for comprehensive planning and development established in each region pursuant to section 54-40-08.
- 11- 12. "Units of general local government" means cities, counties, and organized townships.

SECTION 3. AMENDMENT. Subsection 1 of Section 54-40.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Total membership on a regional council shall be determined by the participating units of general local government, subject to the following minimum criteria of membership:
 - a. ~~At least two-thirds~~ A majority of the full regional council membership shall be comprised of existing elected city officials and county commissioners. Selection of these members shall be by their respective governing bodies.
 - b. One member of the regional council may represent identifiable and organized minority groups existing in the region. Selection of the member may be made by the minority groups upon invitation from the regional council.
 - c. One soil conservation district supervisor from each county shall be appointed to the regional council to represent the interests of the resource conservation and development program or any other related programs of the United States department of agriculture. The appointment of the soil conservation district supervisor shall be made by the respective boards of soil conservation districts. If any county should contain more than one soil conservation district, either in whole or in part, the concerned boards shall meet and jointly agree upon a single appointment to the regional council.
 - d. ~~One member of the regional council may be selected to represent industry. Selection of this member shall be made by the regional council upon recommendations from industry~~ One or more members of the regional council, selected by the local development corporations, shall represent the organized local development corporations existing in the region.
 - e. The chairman of the regional employment training council must be appointed to the regional council.
- e- f. An alternate shall be selected for each regular member of the regional council in the same manner as the regular member is selected. The alternate member is to serve on the regional council when the regular member is absent and shall enjoy the same responsibilities and privileges as a regular member enjoys.

SECTION 4. AMENDMENT. Section 54-40.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40.1-05. Reports. Each regional council shall prepare an annual report within sixty days after the end of each fiscal year. Copies of the report shall be submitted to the participating units of general local government, to the governor or his designee, to the economic development commission, and to members of the legislative assembly in each region. To the extent practicable, the report shall include projects completed or in progress and sources of funding.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 645

SENATE BILL NO. 2049
(Legislative Council)
(Interim Indian Jurisdiction Committee)

STATE-TRIBAL AGREEMENTS

AN ACT to create and enact three new sections to chapter 54-40.2 of the North Dakota Century Code, relating to agreements between state agencies and Indian tribes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-40.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Agreement - Notice. Before the submission of an agreement to the governor, the state agency shall publish a notice containing a summary of the agreement once each week for two consecutive weeks in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must state that the state agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within thirty days of the first publication of the notice.

SECTION 2. A new section to chapter 54-40.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Public hearing - Notice. If the state agency receives a request pursuant to section 1 of this Act, the state agency shall hold a public hearing prior to the submission of the agreement to the governor at which any persons interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published once each week for two consecutive weeks prior to the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement, and must state the times and places at which the agreement will be available to the public for inspection and copying.

SECTION 3. A new section to chapter 54-40.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Review of agreement - Report. Any state agency entering into an agreement approved by the governor pursuant to this chapter, upon the request of any political subdivision affected by the agreement, shall review and determine the utility and effectiveness of the agreement taking into account the original intent of the parties, and determine whether the parties are in substantial compliance with all provisions of the agreement. In making its determinations, the state agency shall provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The state agency shall prepare a report of its determinations made pursuant to this section and shall submit copies of the report to the legislative council and the governor.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 646

SENATE BILL NO. 2251
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

STATE FINANCIAL REPORTING

AN ACT to create and enact a new section to chapter 54-44 of the North Dakota Century Code, relating to financial reporting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44 of the North Dakota Century Code is hereby created and enacted to read as follows:

Financial reporting. To ensure that sufficient information is provided to the office of management and budget for preparing an annual comprehensive financial statement and to ensure that the statewide accounting system and budget system are compatible, the person in charge of any department, agency, board, commission, college, university, or institution shall report all revenues and expenditures through the use of the statewide accounting system. The revenues and expenditures referred to in this section include all funds, including funds not appropriated. Any changes to the present reporting system of the department, agency, board, commission, college, university, or institution necessary to comply with this section must be completed by July 1, 1989.

Any department, agency, board, commission, college, university, or institution that is not presently using the statewide payroll system shall provide the director with current salary information for all permanent and part-time employees when required to do so, in the format designed by the director.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 647

HOUSE BILL NO. 1225
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

BUDGET AND ALLOTMENT CONTROL

AN ACT amend and reenact section 54-44.1-12 of the North Dakota Century Code, relating to control of execution of the budget and allotments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.1-12. Control over rate of expenditures. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of ~~the executive branch of the state government, with the exception of the legislative and judicial branches.~~ Execution shall mean the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of ~~semiannual, quarterly, or monthly~~ allotments. The allotment must be made by specific fund and all departments and agencies that receive monies from that fund must be allotted on a uniform percentage basis. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director must find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, documents, or other reliable evidence available.
4. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

Approved March 13, 1987
Filed March 16, 1987

CHAPTER 648

SENATE BILL NO. 2536 (Tallackson)

REFERENDUM APPROPRIATION REDUCTIONS

AN ACT to create and enact a new section to chapter 54-44.1 of the North Dakota Century Code, relating to the apportionment of reductions in spending authority resulting from an initiative or referendum; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Apportionment of reductions in spending authority caused by an initiative or referendum action. If as a result of any action taken pursuant to article III of the Constitution of North Dakota the moneys available in the state general fund or in any special fund in the state treasury are or will be reduced or eliminated, the director of the budget shall reduce the moneys available to all departments, agencies, and institutions for which moneys have been appropriated or are otherwise available from the affected fund for the current biennial period. The director of the budget shall reduce affected budgets by a percentage sufficient to cover the estimated losses caused by the initiative or referendum action, subject to the approval of the budget section of the legislative council. Notwithstanding the provisions of section 54-44.1-13, the authority to make reductions pursuant to this section applies equally to all entities of the executive, legislative, and judicial branches.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 649

SENATE BILL NO. 2250
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

FEDERAL FUND COST RECOVERY

AN ACT to create and enact a new section to chapter 54-44.1 of the North Dakota Century Code, relating to indirect cost recoveries from federal programs and special funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Indirect cost recoveries from federal programs and special funds. The office of management and budget shall develop a statewide central service indirect cost allocation plan according to federal cost allocation principles. Any state agency receiving federal funds shall seek reimbursement from the federal programs for indirect costs appropriately allocated to the agency in the plan. Any recoveries of central service indirect costs must be deposited in the state general fund at least once annually by the agency as determined by the office of management and budget. The office of management and budget may exclude an agency or agencies from the requirements of this section.

The office of management and budget may bill special fund agencies for central service indirect costs as determined in the cost allocation plan in the ratio that the agency's special funds are to its total budget. Appropriation authority to cover the billings must be included in the budgets of the special fund agencies.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 650

HOUSE BILL NO. 1124
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

PERSONNEL BOARD VACANCIES

AN ACT to amend and reenact subsection 3 of section 54-44.3-03 of the North Dakota Century Code, relating to temporary vacancies on the state personnel board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 54-44.3-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Any permanent vacancy in office shall be filled for the unexpired term in the same manner as the selection of the person vacating the office. However, if a board member voluntarily withdraws from deliberation and voting on an appeal where there may be a possible conflict of interest, the vacancy will be filled temporarily in the same manner as the selection of the person vacating the office. When a temporary vacancy involves a member of the board elected by classified employees, the automatic substitute must be the candidate that received the second highest number of votes in the election that elected the board member. Temporary board members will be used only in situations when a permanent board member voluntarily vacates the position due to a possible conflict of interest.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 651

HOUSE BILL NO. 1155
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

RETIREMENT SERVICE CREDIT PURCHASE

AN ACT to repeal sections 54-52-02.4, 54-52-02.7, and 54-52-02.8 of the North Dakota Century Code, relating to the purchase of retirement service credit by former employees of mental health and retardation centers and special employee refund of accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-52-02.4 of the North Dakota Century Code, and sections 54-52-02.7 and 54-52-02.8 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 652

HOUSE BILL NO. 1077
(Representatives Martinson, Rydell, Mertens)
(Senators Olson, Satrom)

PERS VESTING AND BENEFITS

AN ACT to amend and reenact section 54-52-02.6, subdivisions a and c of subsection 3, paragraphs 1, 2, and 3 of subdivision a and subdivision d of subsection 4, and subsections 5 and 6 of section 54-52-17 of the North Dakota Century Code, relating to vesting and measuring of benefits under the public employees retirement system; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52-02.6 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.6. Repurchase of past service upon reemployment. An individual with ~~ten or more~~ at least eight years of service who terminates participation in the plan ~~after June 30, 1977~~, may, ~~at his or her sole discretion~~, elect to receive a refund of contributions and thus forfeit all rights to plan benefits and all rights to repurchase, for retirement purposes, ~~such that~~ service. An individual who terminates with less than ~~ten~~ eight years of service, may, upon reemployment, repurchase past service in accordance with ~~the rules and regulations~~ established by the board.

SECTION 2. AMENDMENT. Subdivisions a and c of subsection 3 of section 54-52-17 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

a. Normal retirement date is ~~the~~:

(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or ~~when~~

(2) When the member ~~is at least the age of sixty and~~ has a combined total of years of service credit and years of age equal to ninety and has not received a retirement benefit under this chapter.

- c. Early retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed ~~ten~~ eight years of eligible employment.

SECTION 3. AMENDMENT. Paragraphs 1, 2, and 3 of subdivision a of subsection 4 of section 54-52-17 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- (1) Service benefit equals one and ~~thirty-hundredths~~ one-half percent of final average salary multiplied by the number of years of service employment.
- (2) Prior service benefit equals one and ~~thirty-hundredths~~ one-half percent of final average salary multiplied by the number of years of prior service employment.
- (3) All participants ~~retiring prior to July 1, 1985,~~ will have their who retired before July 1, 1987, are entitled to benefits calculated at one and ~~thirty-hundredths~~ one-half percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, ~~1985~~ 1987.

SECTION 4. AMENDMENT. Subdivision d of subsection 4 of section 54-52-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Early retirement benefits shall be calculated as for normal retirement benefits accrued to the date of termination of employment, but shall be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree ~~shall~~ be is eligible for early retirement benefits only after having completed ~~ten~~ eight years of eligible employment.

SECTION 5. AMENDMENT. Subsections 5 and 6 of section 54-52-17 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. Upon termination of employment after completing ~~ten~~ eight years of eligible employment but ~~prior to~~ before normal retirement date, a member who does not elect to receive early retirement benefits ~~shall be~~ is eligible to receive deferred vested retirement benefits payable commencing on ~~his~~ the member's normal retirement date equal to one hundred percent of ~~his~~ the member's accrued normal retirement benefits.

6. If ~~prior to~~ before retiring a member dies after completing ~~ten~~ eight years of eligible employment, the board shall pay the member's account balance to any beneficiary designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary under this section, the surviving spouse of the member may select one of the following optional forms of payment:
- a. A lump sum payment of the member's retirement account as of the date of death.
 - b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.
 - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies. ~~if the spouse dies subsection 8 is applicable.~~

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 653

SENATE BILL NO. 2254
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System
and Deferred Compensation Committee)

DEFERRED COMPENSATION ADMINISTRATION

AN ACT to amend and reenact subsection 7 of section 54-52-04 and sections 54-52.2-01, 54-52.2-02, and 54-52.2-03 of the North Dakota Century Code, relating to administration of the deferred compensation plan for public employees; and to repeal section 54-52.2-03.1 of the North Dakota Century Code, relating to staffing and administrative expenses of the deferred compensation plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 54-52-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The board shall administer chapters 39-03.1 and 54-52.1, and 54-52.2.

SECTION 2. AMENDMENT. Section 54-52.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.2-01. **Deferred compensation program for public employees - Contract.** The state or any county, city, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, fund a deferred compensation program for the employee. The deferred compensation program may consist of a contract, purchase, or investment in a fixed or variable life insurance or annuity contract from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, a savings account at a federally insured financial institution or the Bank of North Dakota, an account with or managed by a dealer registered under chapter 10-04, or any combination of contracts or accounts authorized by this section, as specified by the employee. The ~~committee~~ public employees retirement board shall specify methods of payment of deferred compensation funds to be selected by individual

employees. The ~~committee~~ That board shall determine the number of employees participating in a deferred compensation program necessary to qualify for automatic payroll deduction.

SECTION 3. AMENDMENT. Section 54-52.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.2-02. ~~Deferred employee's compensation - Agreements. The deferred compensation committee~~ public employees retirement board, acting on behalf of each state agency, department, board, commission, or institution, may enter into contractual agreements with employees of a state agency, department, board, commission, or institution on behalf of the state to defer any portion of that employee's compensation allowed under section 457 of the Internal Revenue Code [26 U.S.C. 457].

SECTION 4. AMENDMENT. Section 54-52.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.2-03. ~~Deferred compensation program - Administration - Contract for services. The administration of the deferred compensation program for each state agency, department, board, commission, or institution shall be is under the direction of the state deferred compensation committee public employees retirement board. The committee shall consist of three persons. The governor shall appoint the initial committee and shall appoint persons to fill any vacancy occurring at the expiration of a term. Committee members shall select the person to fill any vacancy occurring prior to the expiration of a term. The initial terms of office are as follows: one member shall serve a one-year term, one member shall serve a two-year term, and one member shall serve a three-year term. The term of office thereafter is three years. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the state deferred compensation committee public employees retirement board to administer the program in its behalf. Payroll reductions shall must be made in each instance, by the appropriate payroll officer. The deferred compensation committee of the deferred compensation program may contract with a private corporation or institutions for providing consolidated billing and other administrative services. The deferred compensation committee public employees retirement board shall administer the deferred compensation program based on a plan in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions.~~

SECTION 5. REPEAL. Section 54-52.2-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 654

HOUSE BILL NO. 1146
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

ASSIGNMENT OF RETIREMENT BENEFITS

AN ACT to amend and reenact section 54-52-12 of the North Dakota Century Code, relating to prohibition of assignment or other pledge of certain retirement benefits and funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-52-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-12. Exemption from taxation and judicial process - Prohibition of assignment. The right of a person to retirement benefits, any optional benefits, any other rights Rights accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all money and investments and income thereof, shall of those funds are not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever. These rights and funds cannot be mortgaged or subjected to assignment or pledge.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 54-52-12 was also amended by section 2 of Senate Bill No. 2052, chapter 386.

CHAPTER 655

HOUSE BILL NO. 1118
(Committee on State and Federal Government)
(At the request of Public Employees Retirement System)

PERS PRIOR SERVICE BENEFITS

AN ACT to amend and reenact section 54-52-19.1 of the North Dakota Century Code, relating to computation of prior service benefits for certain public employees employed under the predecessor to the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52-19.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-19.1. Continuance of prior service benefits earned under former plan. Any retired employee receiving prior service benefits pursuant to under former section 54-52-19 shall is entitled to continue to de so receive those benefits. For the purposes of this section only, section 54-52-19 shall be is deemed to remain in effect. The amount of benefits to which the employee is entitled is double that computed under original section 54-52-19.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 656

HOUSE BILL NO. 1360
(Representative Martinson)
(Senator Lodoen)

PERS PRIOR SERVICE CREDIT

AN ACT relating to crediting prior service for certain members of the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Grant of prior service credit after refund. A member who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system, under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws, is entitled to a regrant of the member's prior service credit forfeited by that withdrawal. To be eligible for the regrant, the member must have been an employee of this state from the date of withdrawal from the predecessor plan through at least July 1, 1987. An eligible member is entitled to prior service credit for service before July 1, 1966. The cost of the repurchase of the credit is the amount of refund the member received, plus interest, compounded at the rate of seven and one-half percent per year, for the period since June 30, 1977. To claim the grant of prior service credit, the member shall notify the executive director of the public employees retirement system of that election and pay to the public employees retirement system the entire cost, with interest, of that repurchase, computed in accordance with this section, by December 31, 1987.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 657

SENATE BILL NO. 2275
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

“ELIGIBLE EMPLOYEE” UNDER UNIFORM GROUP INSURANCE PROGRAM

AN ACT to amend and reenact subsection 4 of section 54-52.1-01 of the North Dakota Century Code, relating to eligibility to participate in the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Eligible employee" means every permanent employee who is employed by the state, county, city, school district, or any combination thereof. Eligible employees include members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workmen's compensation fund. As used in this subsection, "permanent employee" means any person hired with the intent that he be employed for twenty hours or more per week for more than five months each year.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 54-52.1-01 was also amended by section 1 of House Bill No. 1094, chapter 658.

CHAPTER 658

HOUSE BILL NO. 1094
 (Committee on State and Federal Government)
 (At the request of the Public Employees Retirement System)

GROUP MEDICAL PLAN SUBGROUPS

AN ACT to amend and reenact subsection 4 of section 54-52.1-01 and section 54-52.1-02 of the North Dakota Century Code, relating to establishing subgroups and to definitions and eligibility to participate in the group medical plan for certain public employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Eligible employee" means every permanent employee who is employed by ~~the state, county, city, school district, or any combination thereof~~ a governmental unit, as that term is defined in section 54-52-01. Eligible employees include "Eligible employee" includes members of the legislative assembly, judges of the supreme court, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workmen's compensation fund. As used in this subsection, "permanent employee" means any person hired with the intent that he be employed for twenty hours or more per week for more than five months each year one whose services are not limited in duration and who is filling an approved and regularly funded position in a governmental unit, and is employed at least twenty hours per week and at least five months each year.

SECTION 2. AMENDMENT. Section 54-52.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-02. Uniform group insurance program created - Formation into subgroups. In order to promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and

* NOTE: Section 54-52.1-01 was also amended by section 1 of Senate Bill No. 2275, chapter 657.

offer an incentive to high-grade men and women to enter and remain in the service of state employment, there is hereby created a uniform group insurance program. The uniform group shall be composed of eligible employees, and be formed to provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage in the manner set forth in this chapter. The uniform group may be divided into subgroups at the discretion of the board. The subgroups may be established as follows:

1. Active eligible employee group medical and hospital benefits coverage.
2. Retired eligible employee group medical and hospital benefits coverage.
3. Active eligible employee life insurance benefits coverage.
4. Retired eligible employee life insurance benefits coverage.
5. Terminated employee continuation group medical and hospital benefits coverage.
6. Terminated employee conversion group medical and hospital benefits coverage.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 659

HOUSE BILL NO. 1224
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

INSURANCE FOR SURVIVING SPOUSES

AN ACT to amend and reenact section 54-52.1-03 of the North Dakota Century Code, relating to continued health insurance coverage for surviving spouses of certain retired public employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-03. Employee participation in plan - Employee to furnish information - Benefits to continue upon retirement or termination.

1. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. ~~An eligible employee who requests enrollment shall be enrolled with the board by the employing department within~~
2. Within five days after the expiration of the payroll period during which enrollment was requested, the employing department shall enroll the employee with the board. The employee's insurance coverage shall become effective on the date of enrollment.
3. Upon the termination of eligible employment of a member of the legislative assembly, or upon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement, will receive a deferred retirement allowance from a department, board, or agency, ~~such that employee or that employee's surviving spouse may continue as a member of the uniform group under the provisions of this chapter, provided, that no state, The department, board, or agency may not make a contribution for a retired or terminated this coverage,~~

and each eligible employee or the surviving spouse of that employee shall be made, and the employee shall pay the premiums pay directly to the board the premiums in effect for the coverage then being provided.

4. Upon the termination of employment where the employee is not a member of the legislative assembly or entitled to either retirement benefits or a deferred retirement allowance, such that employee shall not cannot continue as a member of the uniform group unless the employee was on the uniform group insurance retiree billings as of July 1, 1974, but. However, the employee may continue on an individual basis with the carrier, with such coverage to be offered at the lowest possible rate, to be determined by the board.
5. A member or former member of the legislative assembly may elect to continue membership in the uniform group within the applicable time limitations after either termination of eligible employment as a member of the legislative assembly or termination of other eligible employment.
6. Each eligible employee requesting enrollment shall furnish the appropriate person in the employing department, board, or agency with such information and in such form as prescribed by the board to enable the enrollment of the employee, or employee and dependents, in the uniform group insurance program created by this chapter. ~~in the event~~
7. If the participating employee is a teacher in a state charitable, penal, or educational institution who receives a salary or wages on a nine-month basis and has signed a contract to teach for the next ensuing school year, the agency shall make arrangements to include such that employee in the insurance program on a twelve-month basis and make the contribution authorized by this section for each month of the twelve-month period.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 660

SENATE BILL NO. 2108
(Committee on Industry, Business and Labor)
(At the request of the Public Employees Retirement System)

STOP-LOSS COVERAGE

AN ACT to amend and reenact section 54-52.1-04.2 of the North Dakota Century Code, relating to the requirement of obtaining aggregate stop-loss coverage under the state self-insurance plan for hospital and medical benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-04.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage. The board may establish a self-insurance plan for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third party administrator (TPA) contract under the uniform group insurance program, if it is determined by the board that an ~~{ASO}~~ ASO or ~~{TPA}~~ TPA plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. In addition, individual and aggregate stop-loss coverage insured by a carrier authorized to do business in this state must be made part of any self-insured plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 661

SENATE BILL NO. 2426
(Senators Mushik, Reiten, Tennesos)
(Representatives Rydell, Kelly)

COUNCIL ON THE ARTS MEMBERS

AN ACT to amend and reenact section 54-54-03 of the North Dakota Century Code, relating to the North Dakota council on the arts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-54-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-54-03. Term of office - Confirmation of appointments by senate-- Filling vacancies - Chairman - Vice chairman - Expenses. The term of office of each member shall be is five years; provided, however, that of the members first appointed, five shall must be appointed for terms of one year, five for terms of three years, and five for terms of five years. The governor shall make the initial appointments to the council within thirty days of July 1, 1967, and these members who were appointed initially and who are still serving by the next legislative session shall be confirmed or rejected by the senate, and if confirmed they shall serve for the remainder of their original terms. When the legislative assembly shall be in session at any time within six months prior to the date of the expiration of the term of any member of the council, the governor shall appoint his successor within the first five days of such session and upon the confirmation of such appointment by the senate, such successor shall take office on the date of the expiration of the term of the incumbent. When a vacancy occurs upon the council otherwise than by the expiration of the term of office of a member thereof, when the legislative assembly is not in session, or when the term of a member of the council expires more than six months after the adjournment of the session of the legislative assembly held prior to the date of the expiration of such term, the governor shall appoint a person to fill such vacancy who shall serve until the opening of the next session of the legislative assembly succeeding such interim appointment, at which time such appointment shall be certified to the senate for confirmation. If the appointment is not confirmed by the thirtieth legislative day of such session, the office so filled by interim appointment shall be

* NOTE: Section 54-54-03 was also amended by section 34 of House Bill No. 1050, chapter 73.

deemed vacant and the governor shall appoint another for such office and the same proceedings shall be followed as provided in this section until a nomination has been confirmed by the senate. If the a vacancy to be filled occurs otherwise than by the expiration of the term of office of a member of the council, the appointment shall must be made for the balance of the term only. No person who has been nominated by the governor in accordance with this section and whose appointment the senate has failed to confirm shall be eligible for an interim appointment. Other than the chairman, no member of the council who serves a full five-year term shall be is eligible for reappointment during a one-year period following the expiration of his term. The governor shall designate a chairman and a vice chairman from the members of the council who shall serve at the pleasure of the governor. The chairman shall be the chief executive officer of the council. The members of the council shall may not receive any compensation for their services, but shall must be reimbursed for their travel expenses in the same manner and at the same rates as provided by law for other state officials for necessary travel in the performance of their duties as members of the council.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 662

SENATE BILL NO. 2293
(Senators Stenehjem, Lashkowitz)
(Representative Kretschmar)

UNIFORM LAW COMMISSIONERS

AN ACT to amend and reenact sections 54-55-01 and 54-55-05 of the North Dakota Century Code, relating to the commission on uniform state laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-55-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-55-01. Commission on uniform state laws - Membership. The commission on uniform state laws shall consist of ~~five members: one shall be an individual~~ engaged in the practice of law in this state, ~~one shall be the dean or a full-time member of the faculty of the law school of the university of North Dakota, one shall be a law-trained judge of a court of record in this state, one shall be a member of the legislative assembly, and one shall be a member of the legislative council staff.~~ The commission shall also consist of any residents of this state who, because of long service in the cause of uniformity of state legislation, ~~shall have been elected life members of the national conference of commissioners on uniform state laws, and may also consist of any residents of this state who have been previously appointed to at least five years of service on the commission.~~ Commissioners, except the member of the legislative assembly, the member of the legislative council staff, and life members, shall be appointed by the governor for terms of four years each, commencing on the first day of September following each presidential election, and shall serve until their respective successors are appointed. The member of the legislative assembly on the commission shall be appointed by the legislative council for a term not to exceed four years as prescribed by the legislative council, and the member of the legislative council staff shall be appointed by the chairman of the legislative council.

SECTION 2. AMENDMENT. Section 54-55-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-55-05. **No compensation for commissioners.** The commissioners shall serve without compensation for services as commissioners, ~~but they shall~~. The commissioners who are appointed to the commission and the commissioners who have been elected life members of the national conference except those who are appointed by virtue of having served five years are entitled to be reimbursed, from moneys appropriated for that purpose, for necessary expenses incurred in performing their duties at the rates provided in sections 44-08-04 and 54-06-09. Warrant-checks for expense reimbursement shall be prepared by the office of management and budget upon vouchers submitted by the commissioners.

Approved March 27, 1987
Filed March 30, 1987

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 663

SENATE BILL NO. 2123
(Committee on State and Federal Government)
(At the request of the State Historical Society)

HISTORICAL SOCIETY MEMBERSHIP

AN ACT to create and enact subsection 12 of section 55-01-02 of the North Dakota Century Code, relating to the powers and duties of the state historical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Subsection 12 to section 55-01-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

12. Establish standards by the adoption of rules to create such classes of membership in the state historical society of North Dakota as it deems desirable, to determine the qualifications of any class of membership, to set forth the fees for such membership, and to provide for membership benefits.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 664

HOUSE BILL NO. 1552
(Hill, O'Shea)

STATE PARK LIQUOR SALES

AN ACT to amend and reenact section 55-08-05 of the North Dakota Century Code, relating to the sale of beer and wine by concessionaires operating within state parks and state recreation areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-05. Charges for services. The director is hereby authorized to provide special services within state parks, state campgrounds, state recreation areas, and reserves, and to make rules and regulations for the use of such services. The director shall establish and cause to be collected charges, fees, and rentals for the use of all such special services, and shall revise the same, when necessary, in such manner that the revenue derived therefrom will be sufficient to pay the cost of providing each such service and to pay the principal of and interest on all bonds issued for projects furnishing the facilities for any such services, and to maintain a reserve for the security of said bonds as herein provided. The director may, however, waive the collection of charges, fees, and rentals for the use of all such special services by health care-related charitable organizations conducting group camp activities without charge to participants. Specifically, but without limitation of said general authorization, the director may:

1. Provide special parking space for automobiles or other motor-driven vehicles in any state park or state recreation area.
2. Provide special parking spurs and campgrounds for automobiles and sites for tent-camping and special auto trailer coach parking spaces for the use of the individual charged for such space according to the daily rate which shall be determined and fixed by the director consistent with the type of facility provided for the accommodation

of visitors in any particular park and with similar facilities offered for tourist camping in the area.

3. Charge a fee for entrance to any pageant grounds which may be created in any state park, state recreation area or reserve for the purpose of having historical or other pageants conducted by the agent of any authorized agency.
4. Provide water, sewer, and electric service to trailer or tent campsites and buildings and structures included in projects authorized by the legislative assembly.
5. Provide facilities for the sale to the public of food, nonintoxicating beverages, except beer and wine sales as provided in subsection 6, and other merchandise and personal services of a suitable nature, and make buildings, structures, and other recreational facilities available for use and occupancy by the public, or contract for the lease of any such buildings, structures, and facilities to a concessionaire to be operated on such terms and compensation basis as the director shall determine to be in the best interest of the state. A bond shall be required of each concessionaire in such amount as the director shall determine, conditioned upon the faithful performance of all duties under the lease and proper accounting for all funds.
6. Allow the sale of beer and wine by concessionaires on property leased to the department by the United States department of the army, corps of engineers, provided the concessionaire also obtains the appropriate local and state licenses required by section 5-02-01.
7. Charge and collect motor vehicle permit fees in such amounts as are or shall be prescribed by the legislative assembly, not less than the amounts now prescribed in section 55-08-06, which fees are and shall be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects.

Approved March 27, 1987

Filed March 30, 1987

CHAPTER 665

HOUSE BILL NO. 1206
(Committee on Natural Resources)
(At the request of the Parks and Recreation Department)

STATE PARK PERMITS

AN ACT to amend and reenact section 55-08-06 of the North Dakota Century Code, relating to annual state park permits for motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-06. Permits for motor vehicles. No motor vehicle shall enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of such motor vehicle shall display upon request a permit issued as provided in this chapter; provided, however, that this shall not apply to any motor vehicles entering any state park for the purpose of parking thereon during the performance of any historic drama. Permits shall be of a size, form, and character as the director shall prescribe, and the director shall procure permits for each calendar year which by appropriate language shall grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year shall be provided and placed on sale ~~before October first next preceeding, and used on or at any time after said date until the end of the calendar year for which issued on or before November first next preceeding,~~ and used on or at any time after that date until May first of the year following the calendar year for which issued. Such permits in each category shall be numbered consecutively for each year of issue. A maximum fee of fifteen dollars may be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of two dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not more than three days. The fees collected shall be deposited in the state park operating fund in the state treasury.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 666

HOUSE BILL NO. 1194
(Committee on Natural Resources)
(At the request of the Parks and Recreation Department)

**STATE PARKS AND RECREATION DEPARTMENT
CONCESSION FUND**

AN ACT to amend and reenact section 55-08-07.1 of the North Dakota Century Code, relating to use of the state parks and recreation department concession fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-07.1. State parks and recreation department concession fund - Appropriation. The director shall establish a state parks concession fund to be used for the following:

1. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands at the state parks, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.
2. Repair, replacement, construction, and maintenance of concession stands buildings, facilities, and properties contained therein.

There is hereby transferred out of any moneys in the general fund in the state treasury, ~~not otherwise appropriated, the sum of thirty thousand dollars, or so much thereof as may be necessary, to the state parks concession fund to provide the initial working capital, and such sum~~ The sum of fifty thousand dollars is hereby appropriated from the state parks concession fund for the purpose provided in this section as a standing and continuing appropriation. Any surplus in this fund in excess of ~~thirty~~ fifty thousand dollars on June thirtieth of each year shall be transferred to the state park operating fund.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 667

SENATE BILL NO. 2387
(Senators D. Meyer, Nething)
(Representative Haugen)

HISTORIC SITE DESIGNATION OBJECTIONS

AN ACT to create and enact a new subsection to section 55-10-08 of the North Dakota Century Code, relating to objections by political subdivisions to state historic site designations by the state historical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 55-10-08 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

In the event a city, county, school district, or other political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state historical sites registry, such political subdivision may submit the objection to arbitration as provided in this subsection. Arbitration may also be demanded by either the board or such political subdivision if the board or the political subdivision determines that the other has failed to cooperate in identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand thereof of the other and in such demand shall name three arbitrators. The demand shall also set forth the objections which the party desires to submit to arbitration, with reference to the particular state historic site. Such demand shall be served upon the other party, which, within ten days, shall name in writing three arbitrators, and in connection therewith shall set forth in writing its response to the objections set forth in the demand served upon it and any additional objections which it desires to submit to arbitration on its part. The six arbitrators so selected shall name a seventh arbitrator. If the party proceeded against shall fail or refuse to name three arbitrators, the moving party may apply ex parte to the judge of the district court of the county in which the state historical

site in question, or any part thereof, may be located, for the appointment of the unnamed arbitrators, and if upon the appointment of three arbitrators by each of the parties, the six so appointed have been unable to agree upon a seventh arbitrator within five days, then either party, upon five days' notice may apply to such district court for the appointment of such seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing shall be executed as provided in section 32-29-02, except that such submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however the costs and expenses relating to the seventh arbitrator shall be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of them, shall be given in writing to the board or the officials concerned and shall be binding upon both parties. Thereafter, the arbitration shall proceed in accordance with the provisions of chapter 32-29.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 668

HOUSE BILL NO. 1163
(Committee on Natural Resources)
(At the request of the Parks and Recreation Department)

NATURE PRESERVE AND NATURAL AREA RULES

AN ACT to create and enact a new subsection to section 55-11-09 of the North Dakota Century Code, relating to the adoption of rules for protection, care, and use of state nature preserves and state natural areas; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 55-11-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

To adopt and enforce suitable rules relating to the protection, care, and use of any state nature preserve or state-owned or state-managed natural area. The violation of any such rule shall constitute an infraction.

Approved March 19, 1987
Filed March 20, 1987

TAXATION

CHAPTER 669

HOUSE BILL NO. 1369
(Representatives Tollefson, Haugen)
(Senators Reiten, Nalewaja)

RESIDENTIAL PROPERTY TAX EXEMPTIONS

AN ACT to create and enact two new subsections to section 57-02-08 of the North Dakota Century Code, providing exemptions from property taxes for new single family residential property and condominiums and townhouses which meet certain qualifications; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-02-08 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Up to seventy-five thousand dollars of the true and full value of all new single family residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
- b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.
- c. The first owner after the builder resides on the property, or the builder still owns the property. For

purposes of this subsection, "builder" includes a person who builds that person's own residence.

For purposes of this subsection "single family residential property" does not include condominium or townhouse property.

Up to seventy-five thousand dollars of the true and full value of each unit of all new condominium and townhouse residential property, exclusive of the land on which it is situated, shall be exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
- b. Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.
- c. The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for property upon which construction is begun after January 1, 1986, for exemptions approved by city or county governing bodies after December 31, 1986, and before January 1, 1990, and is thereafter ineffective.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 670

HOUSE BILL NO. 1644
(Strinden, Kloubec)

ACADEMIC OR RESEARCH TAX EXEMPTIONS

AN ACT to create and enact a new subsection to section 57-02-08, a new subsection to section 57-39.2-04, and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to a property tax exemption for certain property used for academic or research purposes by students or faculty of a state institution of higher education and sales or use tax exemption of sales of flight simulators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-02-08 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Any building located on land owned by the state if the building is used at least in part for academic or research purposes by students and faculty of a state institution of higher education.

SECTION 2. A new subsection to section 57-39.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from sales of tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.

SECTION 3. A new subsection to section 57-40.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Tangible personal property consisting of flight simulators or mechanical or electronic equipment for use in association with a flight simulator.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 671

HOUSE BILL NO. 1572
(Representative Mertens)
(Senator Lips)

CONDITIONAL WETLANDS EXEMPTION

AN ACT to amend and reenact sections 57-02-08.4 and 57-02-08.5 of the North Dakota Century Code, relating to suspension of conditional property tax exemptions for owners of wetlands if adequate funds are not available for payments by the state to political subdivisions to offset lost property tax revenue from exempt wetlands; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section shall be exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage, and that the landowner has filed the required agreement. The amount of the wetlands exemption shall be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the game and fish commissioner, in accordance with United States

fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated shall be computed, and the property owner shall pay the difference between such amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, shall not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property shall be exempt under this section unless the tax commissioner has certified to the county auditor of each county before August first of the taxable year that funds are available in the state treasury which may be used for payment of any state obligations under section 57-02-08.5.

SECTION 2. AMENDMENT. Section 57-02-08.5 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.5. Wetlands tax exemption payment - Certification. Prior to March first of each year beginning in 1988, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the commissioner the total amount of property tax which would have been due on property exempt under section 57-02-08.4 within the county and other information as may be prescribed by the commissioner. The county auditor shall forward to the commissioner copies of all agreements described in section 57-02-08.4 in effect in the county.

The commissioner shall audit the claims for exemption, make corrections as required, and certify to the state treasurer for payment to each county on or before June 30, 1988, and each year thereafter, the sum of property taxes due on property exempt under section 57-02-08.4 for the county in the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute it to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and the state tax commissioner and supplemental payments by the state treasurer may be made after the date prescribed in this section to make corrections as may be necessary.

No certifications must be made and no apportionment or distribution of payments to political subdivisions may be made under this section unless property was exempt under section 57-02-08.4 in the preceding year.

SECTION 3. EFFECTIVE DATE. This Act is effective for all tax years beginning after December 31, 1986.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 672

SENATE BILL NO. 2213
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

TELECOMMUNICATION PROPERTY TAXATION

AN ACT to create and enact a new section to chapter 57-06 of the North Dakota Century Code, relating to telecommunication services; and to amend and reenact section 57-06-02 of the North Dakota Century Code, relating to the definition of property that is taxed as telephone service property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-06-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-02. Definitions. As used in this chapter, unless the context and subject matter otherwise clearly require:

1. "Company" means and includes any individual, copartnership, business trust, corporation, joint stock company, or association.
2. "Gas company" means a company owning, holding, or operating under lease or otherwise, any property in this state for the purpose of furnishing gas, or distributing the same, for public use, by means of pipelines.
3. "Pipeline company" means a company owning, holding, or operating under a lease or otherwise, any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.
4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state, and operating the same, for the purpose of furnishing electric light, electric power, or steam heat, or distributing the same, for public use.

5. Repealed by S-L- 1985, ch- 604, § 22 "Telecommunications company" means a company engaged in the furnishing of telecommunications service within this state.
6. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.
7. "Telegraph company" means a company owning or operating any telegraph or cable line in this state with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation as owner, lessee, or otherwise.
7. "Telephone company" means a company owning or operating, under lease or otherwise, any property in this state used in the business of conveying messages by use of the telephone or any similar instrument or device.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Telecommunications service - Exceptions. Telecommunications service does not include and the provisions of this chapter do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. The purchase and resale of telecommunications service.
3. Home and business telephone terminal equipment.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 673

SENATE BILL NO. 2076
(Legislative Council)
(Interim Tax Administration Committee)

POLITICAL SUBDIVISIONS LEVY LIMITATIONS

AN ACT providing limitations on property tax levy increase authority of political subdivisions; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district, with the exception of school districts, may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed under subsection 3 or 4, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts provided in this section.
2. For purposes of this section "base year" means the taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the current taxable year.
3. A taxing district may elect to levy at most five percent more in the current taxable year than the amount levied in dollars in the taxing district's base year. The governing body of the taxing district shall specifically approve by resolution any levy of the additional percentage. Before adding the increase, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by the application of the current year's mill rate for that taxing district to the final taxable valuation of any property that is not included in the assessment for the current year but was included in the assessment for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the current year's mill rate for

that taxing district to the final taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the current year.

- c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in the base year reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any mill levies authorized by law but not levied by the governing body of the taxing district for the base year and any mill levies specifically authorized by the electors of that taxing district but not levied for the base year to the taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied pursuant to this subsection.
5. A taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. The limitation on the amount that may be levied by a taxing district pursuant to this section does not apply to school districts.
8. This section does not apply to any city or county that has adopted a home rule charter unless the provisions of the charter specifically provide that state laws related to property tax levy limitations will apply.

SECTION 2. School district levy limits. Any school district may increase its levy for the purposes listed in section 57-15-14.3 by at most five percent in the current taxable year from the amount levied in dollars in its base year. In the alternative, but not in addition, any school district whose electorate has approved a specified levy for prior years and which district did not levy up to the authorized level of that specified levy, may levy the difference between the levy authorized and the amount levied the preceding year for that purpose in addition to the maximum levy allowable under section 57-15-14. For purposes of this section "base year" means the taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the current taxable year.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1986, and is thereafter ineffective.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 674

SENATE BILL NO. 2081
(Legislative Council)
(Interim Transportation Committee)

COUNTY ROAD PROGRAM LEVY

AN ACT to amend and reenact section 57-15-06.3 of the North Dakota Century Code, relating to the county road program of farm-to-market and federal-aid roads; and to provide for partial retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-06.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.3. County road program of farm-to-market and federal-aid roads
- Tax levy - Use of excess funds.

1. The board of county commissioners of any county may prepare a proposed county construction program of farm-to-market and federal-aid roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction. After approval of the program by the state highway department and the federal highway administration, the board may submit the program to the electors of the county with the question of levying a tax not exceeding the limitation in subsection 17 of section 57-15-06.7 for the completion of the program by matching, from the proceeds of the tax, federal funds available for federal-aid, secondary and feeder roads, farm-to-market roads, and all roads as provided for under federal-aid highway acts. If the majority of the electors voting on the question approved the program and levy, the board shall levy a tax not in excess of fifteen mills. ~~The proceeds of the tax shall be used, except as provided in this section, only for matching federal aid available for the program which shall be the official county road program.~~

2. If the board of county commissioners determines that a substantial change is necessary in the details of the program of farm-to-market and federal-aid roads previously approved by the electors of the county, the board shall set a date for a public hearing on the proposed amendment to the program. Notice shall be published in the official newspaper of the county once a week for three consecutive weeks before the date of public hearing. The board, after approval of the amendment by the state highway department and the federal highway administration, may officially amend the program. The program, as amended by the board, shall become the official county road program.
3. The board of county commissioners may change the program if the program has not been completed within ten years of the election establishing the program and the board complies with the requirements specified for changes in the original designation of a county road system under section 24-05-16.
4. Any proceeds of a tax levy in excess of the amount needed to match federal funds in any year may be used by the county, at any time the proceeds may become available, for providing paved or any other type of road surfacing on, or for maintenance of, roads included within the county road program for which the tax levy was originally made.

SECTION 2. PARTIAL RETROACTIVE APPLICATION OF ACT.

Subsection 3 of section 57-15-06.3, originally enacted as subsection 2 of section 57-15-06.3 by chapter 569 of the 1981 Session Laws of North Dakota, is retroactive to road programs that were the subject of elections held before July 1, 1981.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 675

SENATE BILL NO. 2153
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

COUNTY LOAN REPAYMENT LEVIES

AN ACT to amend and reenact subsection 27 of section 57-15-06.7 of the North Dakota Century Code, relating to exceptions to county tax levy limitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 27 of section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27. A county levying a tax to repay a loan ~~from the Bank of North Dakota~~ according to section 57-47-04 may levy a tax not to exceed three mills.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 676

HOUSE BILL NO. 1415
(Representatives A. Olson, Myrdal, Smette)
(Senator Vosper)

COUNTY FAIR LEVIES

AN ACT to create and enact three new subsections to 57-15-06.7 of the North Dakota Century Code, relating to county tax levies for county fair associations which are in addition to the general fund levy; to amend and reenact sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-37, 11-11-24, 18-07-01, and 57-15-06.8 of the North Dakota Century Code, relating to county fair association tax levies and county tax levies and limitations not in addition to the general fund levy; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-26 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-26. County fairs - Organized when - Aiding. A county fair association may be organized in any county having taxable property of a taxable valuation of not less than seven hundred fifty thousand dollars. The executive officers and directors shall be residents of the county. The association may apply to the board of county commissioners of the county for a grant to aid in the erection of suitable buildings and other improvements to accommodate its patrons and exhibits, and to pay premiums and expenses that may be awarded on such exhibits at any fair. An application for the grant shall be in writing and shall state the incorporation of the association, the names and places of residence of all its executive officers, and the ownership of real property in the county sufficient in area for the purpose of its fair and of the value of at least twenty-five hundred dollars. If the board of county commissioners is satisfied that the statements in the application are true and that the association intends in good faith to hold a fair within the county annually for the exhibition of agricultural, horticultural, mechanical, and manufactured products of the county, and of such articles as are usually exhibited at fairs, it may levy for the first year's grant of aid a tax not exceeding the limitation in ~~subsection 1 of section 57-15-06.8~~ section 57-15-06.7 which shall be collected as other

taxes are collected. If the tax is levied, the board of county commissioners shall pay to the secretary of the association, not later than July thirty-first thereafter, the amount of the tax levied and shall take the receipt of the association therefor.

SECTION 2. AMENDMENT. Section 4-02-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-27. Reports required of county fair associations - Tax levies for support thereof. Any county fair association receiving the aid provided for in this chapter, at the regular meeting of the board of county commissioners held in the month of January following the holding of such county fair, shall make a full report to the board of all moneys received by it from all sources and of all disbursements. The report shall show the amount of the debts and the amount of moneys in the treasury of the association, and the amount of any deficit after the payment of its expenses, and shall contain an estimate of the amount, if any, which it will be necessary to raise above the estimated ordinary receipts of the association for the purposes of its fair for the ensuing year. The report and estimate shall be verified by the oath of the president, or vice president, the secretary, treasurer, and a majority of the board of directors of the association. After the filing and approval of the report, the board of county commissioners shall levy a tax for the current year equal to the estimate contained in the association's report, if the report filed shows that the funds have been expended legally and if the levy is approved by the voters. The tax levied for the current year shall not exceed the limitation in ~~subsection 2 of section 57-15-06-8~~ section 57-15-06.7, and the amount levied shall be paid to the association as provided in section 4-02-26.

SECTION 3. AMENDMENT. Section 4-02-27.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-27.1. Additional levy authorized. The board of county commissioners may, by appropriate resolution, submit to the electors of the county at the next special or general election, the question of whether an annual tax levy, in addition to the levy provided in section 4-02-27, shall be authorized for the purposes of aiding a county fair association. If an additional levy is approved by the electors, the board of county commissioners may make the additional annual levy, not to exceed the limitation in ~~subsection 3 of section 57-15-06-8~~ section 57-15-06.7, and disburse the proceeds in the manner provided in section 4-02-27 for the levy and disbursement of other county fair association aid funds. The failure of the electors to approve any additional mill levy under this section shall not be construed as invalidating a levy approved prior to the election.

SECTION 4. AMENDMENT. Section 4-02-37 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-37. Multicounty fairs - Organized when - Tax levy. A county fair association may be organized in two or more counties having taxable property of a taxable valuation of not less than seven hundred fifty thousand dollars. The executive officers and directors shall be residents of the counties. The association may apply to the boards of county commissioners of the counties for a grant to aid in the erection of suitable buildings and other improvements to accommodate its patrons and exhibits, and to pay premiums and expenses that may be awarded on such exhibits at any fair. An application for the grant shall be in writing and shall state the incorporation of the association, the names and places of residence of all its executive officers, and the ownership of real property in one of the counties sufficient in area for the purpose of its fair and the value of at least twenty-five hundred dollars. If the boards of county commissioners are satisfied that the statements in the application are true and that the association intends in good faith to hold a fair within one of the counties annually for the exhibition of agricultural, horticultural, mechanical, and manufactured products of the county, and of such articles as are usually exhibited at fairs, it may levy for the first year's grant of aid a tax not exceeding the limitation in ~~subsection 4 of~~ section 57-15-06.8, and it shall be collected as other taxes are collected. If the tax is levied, the boards of county commissioners shall pay to the secretary of the association, not later than July thirty-first thereafter, the amount of tax levied and shall take the receipt of the association therefor. A multicounty fair association authorized by this section and the boards of county commissioners of such counties, may do all the things allowed by law that a county fair association organized under section 4-02-26 may do.

SECTION 5. AMENDMENT. Section 11-11-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-24. Limitation on tax levy for extraordinary expenditure. The rate of tax levied by the board of county commissioners for an extraordinary outlay of money may not exceed the limitation in ~~subsection 5 of~~ section 57-15-06.8. When the object is to establish a building fund to aid in the erection of public buildings, the rate shall be such as to raise the fund within six years, and the total sum to be so raised, including the then existing indebtedness of the county, shall not exceed five percent of its assessed valuation. A special tax levied under this chapter, after becoming delinquent, shall draw the same rate of interest as ordinary taxes.

SECTION 6. AMENDMENT. Section 18-07-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-07-01. Petition to board of county commissioners to establish firebreaks - Tax levied. Whenever a petition asking that firebreaks be established in a county is signed by at least ten percent of the qualified electors of the county, as determined by the number of votes cast for the office of governor at the last preceding general election, and is presented to the board of county commissioners, the board, at the time of levying other taxes in each year, may levy an amount not exceeding the limitation in ~~subsection 6~~ of section 57-15-06.8 for the purpose of making firebreaks in the county. The money collected as a result of the levy shall be known as the "firebreak fund".

SECTION 7. Three new subsections to section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one-half of one mill.

Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one mill.

Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.

SECTION 8. AMENDMENT. Section 57-15-06.8 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-06.8. County tax levies and limitations not in addition to the general fund levy. The following mill levies, expressed as mills on the dollar of taxable valuation of property within the county, may be levied by counties but are not excepted from the general mill levy limitations of section 57-15-06:

1. ~~Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one-half of one mill.~~
2. ~~Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one mill.~~
3. ~~Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.~~

- 4- Counties levying a tax for multicounty fairs according to section 4-02-37 may levy a tax not exceeding one-half of one mill.
- 5- 2. Counties levying a tax for extraordinary expenditures according to section 11-11-24 may levy a tax not exceeding five mills.
- 6- 3. Counties levying a tax to establish firebreaks according to section 18-07-01 may levy a tax not exceeding five mills.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 677

HOUSE BILL NO. 1449
(Representatives Wald, Goetz)
(Senator Waldera)

CITY JOB DEVELOPMENT AUTHORITIES

AN ACT to provide authority for the creation and operation of city job development authorities; to create and enact a new subsection to section 57-15-10 of the North Dakota Century Code, relating to a city tax levy for operation of a city job development authority; and to amend and reenact subsection 29 of section 57-15-06.7 of the North Dakota Century Code, relating to county tax levies for support of job development authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. City job development authority - Board of directors member qualifications. The governing body of a city, by resolution, may create a job development authority for the city, or may discontinue a job development authority which has been created for the city. Before a resolution is adopted to create a city job development authority, the governing body of the city shall hold a public hearing to provide interested persons an opportunity to be heard. Notice of the time, place, and purpose of the hearing must be published not less than thirty days prior to the hearing in the official newspaper of the city. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition signed by electors of the city equal in number to ten percent of the votes cast in the city for the office of governor in the last general election. The petition must be presented to the governing body of the city not later than thirty days after the adoption of the resolution creating the city job development authority. The question of discontinuing the authority requires a majority of the electors voting on the question for passage. If the authority is created, the governing body of the city shall appoint a board of directors. The members shall be appointed without regard to political affiliation and upon their fitness to serve as members by reason of character, experience, and training.

SECTION 2. Members of the city job development authority board of directors - Term of office - Oath - Expenses. The members

of the city job development authority board of directors shall serve for a term of three years or until their successors are duly qualified. Terms of office shall begin on January first and shall be arranged so that the terms of office of approximately one-third of the members expire on December thirty-first each year. Each member of the board shall qualify by taking the oath provided for civil officers. The oath shall be filed with the city auditor.

The board of directors shall annually elect members to serve as chairman, vice chairman, secretary, and treasurer. They shall also select an executive committee with such powers and duties as may be delegated by the board of directors. Members may be reimbursed from funds available to the authority for mileage and expenses at the rates provided for state employees in sections 44-08-04 and 54-06-09 but members may receive no compensation for service.

SECTION 3. Powers and duties of city job development authorities. The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real or personal property.
6. To certify a tax levy as provided in section 4 of this Act and to expend moneys raised by the tax for the purposes provided in this Act.
7. To insure or provide for insurance of any real or personal property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section.
10. To exercise any other powers necessary to carry out the purposes and provisions of this Act.

SECTION 4. Tax levy for city job development authorities. The governing body of a city which has a city job development authority shall establish a city job development authority fund and levy a tax not exceeding the limitation in section 6 of this Act. The city auditor shall keep the fund separate from other money of the city and transmit all funds received under this section within thirty days to the board of directors of the city job development authority. The funds when paid to the city job development authority shall be deposited in a special account in which other revenues of the city job development authority are deposited and may be expended by the city job development authority as provided in sections 2 and 3 of this Act.

In lieu of establishing a job development authority, the governing body of a city where an active industrial development organization exists may levy a tax not exceeding the limitation in section 6 of this Act. The funds from the alternative levy may be used to enter into a contract with the industrial development organization for performance of the functions of a city job development authority.

SECTION 5. AMENDMENT. Subsection 29 of section 57-15-06.7 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29. A county levying a tax for a job development authority as provided in section 11-11.1-04 or for the support of an industrial development organization as provided in section 11-11.1-06 may levy a tax not exceeding four mills on the taxable valuation of property within the county, unless any city within the county is levying a tax for support of a job development authority or for support of an industrial development organization, in which case the county tax levy under this subsection may be applied only against the taxable valuation of property outside the limits of any city levying a tax under section 6 of this Act.

SECTION 6. A new subsection to section 57-15-10 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Taxes levied for a city job development authority as provided in section 4 of this Act may be levied in an amount not exceeding four mills.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 678**SENATE BILL NO. 2085
(Lips)****PARK AND RECREATION LEVY**

AN ACT to provide mill levy authority for support of parks and recreational facilities; and to create and enact a new subsection to section 57-15-12.2 of the North Dakota Century Code, relating to park district tax levy limitations.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. Tax levy for parks and recreational facilities. A board of park commissioners established pursuant to chapter 40-49, may levy taxes annually not exceeding the limitation in section 2 of this Act for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the park district. The question of whether the levy is to be discontinued shall be submitted to the qualified electors at the next regular election upon petition of twenty-five percent of the qualified electors voting in the last regular park district election, if the petition is filed not less than sixty days before the election. If the majority of the qualified electors vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

SECTION 2. A new subsection to section 57-15-12.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

A park district levying a tax for parks and recreational facilities in accordance with section 1 of this Act may levy a tax not exceeding five mills.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 679

HOUSE BILL NO. 1529
(Representatives O'Connell, Gates, Brokaw)
(Senators Lips, Wogsland, Thane)

SCHOOL FUND TRANSFERS

AN ACT to create and enact a new subsection to section 57-15-17 of the North Dakota Century Code, relating to transfers by school districts of unobligated funds from the building fund to the general fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-15-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Whenever collections from the taxes levied for the current budget and other income are insufficient to meet the requirements for general operating expenses, a majority of the governing body of a school district may transfer unobligated funds from the school building fund into the general fund of the school district if the school district has issued certificates of indebtedness equal to fifty percent of the outstanding uncollected general fund property tax. No school district may transfer funds from the school building fund into the general fund for more than two years.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 680

HOUSE BILL NO. 1675
(Representatives Strinden, A. Olson, Myrdal)
(Senator Heigaard)
(Approved by the Committee on Delayed Bills)

ASBESTOS ABATEMENT LEVY

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to a school district mill levy for asbestos abatement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Multiyear asbestos abatement levy by school district.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of providing funds for the removal of asbestos substances from school buildings and for any repair, replacement, or remodeling that results from removal of asbestos substances.
2. All revenue accruing from the levy under this section must be placed in a separate fund known as the asbestos abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos abatement.
3. Any moneys remaining in the asbestos abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos abatement project must be transferred to the general fund of the school district upon the order of the school board.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 681

SENATE BILL NO. 2246
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

SENIOR CITIZEN PROGRAM GRANTS

AN ACT to amend and reenact subsection 5 of section 57-15-56 of the North Dakota Century Code, relating to the state matching program for senior citizen programs and activities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-56 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The department of human services shall match funds levied by counties and cities for senior citizen programs and activities operated pursuant to this section. The grants shall be made on or before March first of each year and shall be equal to the amount levied for the previous taxable year by each county or city within the limitations of legislative appropriations, provided that no such grant may be made to any county or city which has not filed with the department of human services a required written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the department of human services on or before February first of each year following a year in which the reporting county or city received grant funds under this subsection.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 682

SENATE BILL NO. 2440
(Senator Lodoen)
(Representative Lindgren)

LAW ENFORCEMENT FACILITIES

AN ACT to create and enact section 57-15-59 of the North Dakota Century Code, relating to counties and cities entering into long-term leases and dedicating taxes for regional, county, or municipal correction centers and law enforcement facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 57-15-59 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-15-59. Counties and cities authority to enter leases for correction and law enforcement facilities and dedicate mill levies. Notwithstanding any other provision of law, counties and cities, including home rule counties and cities, may upon a two-thirds vote of the governing body enter into leases for correction centers, jails, and other law enforcement facilities for a term of one year or more but not exceeding twenty years. At the time of entering into such a lease, the governing body shall dedicate the necessary annual mill levies to fund the lease payments, and such dedicated mill levies shall be irrevocable for the length of the lease. The governing body may levy and dedicate a levy of up to ten mills for such purposes, and this levy is in addition to any mill levy limitations established by law or by a home rule charter. If a governing body enters into a lease with annual payments from revenue from a levy under this section, payments due under the lease are a general obligation of the county or city and backed by the full faith and credit of the county or city. A certified copy of the lease and resolution dedicating a levy under this section must be filed with the county auditor, who shall annually levy the mills set forth in the resolution for the entire term of the lease, unless the governing body provides the county auditor with a certified copy of a resolution providing that the county or city has funds available for all or part of the next year's lease payment and that no part or only a portion of the mills originally dedicated to the lease payment need to be levied for that year.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 683

SENATE BILL NO. 2370
(Dotzenrod)

PROPERTY TAX DUE DATE

AN ACT to provide that payment of property taxes that fall due on a day on which the county treasurer's office is not open may be made on the first following day on which the office is open.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Extension of due date for property taxes when county treasurer's office is closed. When the due date for full or installment payment of any property taxes or special assessments falls on a day on which the county treasurer's office is not open for business, the payment may be made on the first day following on which the office is open without penalty or loss of discount.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 684

HOUSE BILL NO. 1679
(Strinden)

(Approved by the Committee on Delayed Bills)

AIR CARRIER COMPANY TAXES

AN ACT to amend and reenact sections 57-32-01.2 and 57-32-04 of the North Dakota Century Code, relating to the assessment and allocation of the tax on air carrier transportation companies; and to repeal section 57-32-01.3 of the North Dakota Century Code, relating to allocation of value of air carrier transportation companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-32-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-01.2. Method of valuation. All of the operative property within North Dakota of each air carrier transportation company which is defined as real property under section 57-02-04 shall be valued for assessment purposes by the tax commissioner and the state board of equalization and a portion of the total valuation shall be allocated to the state of North Dakota. For the purpose of determining the value of the operative property within North Dakota of each air transportation company, the tax commissioner and the state board of equalization shall take into consideration the original cost and replacement cost of the property, depreciation, obsolescence, the earning power of the property as shown by the company's gross earnings and net operating income, the market or actual value of the company's stock and bonds and other liabilities, and such other legally established evidences of value as shall that enable the tax commissioner and the state board of equalization to make a just and equitable assessment.

SECTION 2. AMENDMENT. Section 57-32-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-32-04. Allocation of tax. The taxes imposed by this chapter upon express companies shall be collected by the state treasurer and deposited in the state general fund.

The taxes imposed by this chapter upon air transportation companies shall be deposited with the state treasurer, who shall credit the same to the air transportation fund, but within ninety days after receipt thereof, these funds shall be allocated and remitted as herein provided by the state treasurer to the cities or municipal airport authorities where such transportation companies make regularly scheduled landings. The taxes collected from each such company shall be allocated to each city or municipal airport authority where such that company makes regularly scheduled landings according to the ratio that the annual gross landing weight of the company for such city or municipal airport authority bears to the total annual gross landing weight of the company for all cities or municipal airport authorities where it makes regularly scheduled landings. The annual gross landing weight of a company for a city or municipal airport authority shall be computed by (1) multiplying the certified landing weight for each plane of the company by the number of landings made by it during the preceding calendar year at the city or municipal airport authority, and (2) adding together the amount so computed for each such plane. The annual gross landing weight of a company for all cities and municipal airport authorities shall be the total of the annual gross landing weight of the company for each city or municipal airport authority in which it made regularly scheduled landings. The certified landing weight of a plane shall be the landing weight as certified by the federal aviation agency by multiplying the total tax collected by a fraction, the numerator of which is the value of the company's property at a given city or municipal airport and the denominator of which is the total value of the property located in North Dakota that is subject to the assessment. It shall be the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies and the amount of tax of each company that shall be allocated by the state treasurer to each city or municipal airport authority.

SECTION 3. REPEAL. Section 57-32-01.3 of the North Dakota Century Code is hereby repealed.

Approved April 10, 1987
Filed April 14, 1987

CHAPTER 685

SENATE BILL NO. 2103 (Mathern)

TOBACCO PRODUCTS EXCISE TAX

AN ACT to amend and reenact subsection 1 of section 57-36-25, subsections 1 and 2 of section 57-36-26, and subsection 1 of section 57-36-28 of the North Dakota Century Code, relating to the excise tax and consumer's use tax on cigars, snuff, and other tobacco products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-36-25 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, sold in this state an excise tax at the rate of ~~eleven~~ twenty percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 57-36-26 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~eleven~~ twenty percent of the wholesale purchase price at the time such products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction; provided, that the dealer may elect to report and remit the tax on his cost price of such products rather than on the wholesale purchase price. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit such a remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
2. If cigars or snuff or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in such other state is ~~eleven~~ twenty percent of the wholesale purchase price or more, then no tax shall be due on such article. The provisions of this subsection shall apply only if such other state allows a tax credit with respect to the excise tax on cigars, snuff, and other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff, and other tobacco products in this state, and upon such consumers, at the rate of ~~eleven~~ twenty percent of the cost to the consumer of such products.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 686

SENATE BILL NO. 2216
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

CIGARETTE TAX RATE

AN ACT to amend and reenact section 57-36-32 of the North Dakota Century Code, relating to an additional tax on cigarettes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of ~~four~~ seven mills on each such cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying such tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 687

SENATE BILL NO. 2557
(Senator Heigaard)
(Representative Strinden)
(Approved by the Committee on Delayed Bills)

ADDITIONAL SALES TAX

AN ACT to create and enact a new section to chapter 57-39.2, a new section to chapter 57-40.2, a new section to chapter 57-40.3, and a new section to chapter 57-40.5 of the North Dakota Century Code, relating to a separate and additional sales, use, motor vehicle excise, and aircraft excise tax; to amend and reenact section 57-36-32 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2216, as approved by the fiftieth legislative assembly, and subsections 7, 8, and 9 of section 57-39.2-01, subdivision b of subsection 1 of section 57-39.2-02.1, subsection 8 of section 57-40.2-01, subsection 1 of section 57-43.1-02, subsection 1 of section 57-43.2-02, and section 57-43.2-03 of the North Dakota Century Code, relating to the tax imposed on cigarettes, motor vehicle fuels, and special fuels and a special fuel tax exemption for state and political subdivisions and to imposition of sales and use taxes on cable television and other video programming services; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-32 of the North Dakota Century Code, as contained in Section 1 of Senate Bill No. 2216, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of seven eight and one-half mills on each such cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than

for delivery to wholesalers in this state, without first paying such tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

* SECTION 2. AMENDMENT. Subsections 7, 8, and 9 of section 57-39.2-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, cable television or other video programming services, and communication service to retail consumers or users; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient, or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property shall be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state shall not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection the word "consumer" shall include any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed shall be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the

* NOTE: Subsection 8 of section 57-39.2-01 was also amended by section 1 of House Bill No. 1195, chapter 704.

last day on which payments may be made without penalty as provided in section 57-39.2-12.

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, cable television or other video programming services, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
9. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, cable television or other video programming services, or communication, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

* SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2406, chapter 707.

- b. The furnishing or service of gas, cable television or other video programming services, communication services, or steam other than steam used for processing agricultural products.

SECTION 4. A new section to chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional tax on retail sales. There is imposed a tax of one-half of one percent, in addition to any other tax provided by law, upon the gross receipts of retailers from all sales at retail which are taxable under this chapter. In the case of any contract for the construction of highways, roads, streets, bridges, and buildings awarded prior to July 1, 1987, the contractor receiving the award is liable only for the sales tax at the rate of tax in effect on the date of the contract.

SECTION 5. AMENDMENT. Subsection 8 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Tangible personal property" means:
- a. Tangible goods, wares, and merchandise, and gas, cable television or other video programming services, when furnished or delivered to consumers or users within this state.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.

SECTION 6. A new section to chapter 57-40.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

Separate and additional use tax. An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of one-half of one percent of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not

originally purchased for storage, use, or consumption in this state at the rate of one-half of one percent of the fair market value of the property at the time it was brought into this state. The tax imposed under this section applies to any activity that is taxable under this chapter and the tax imposed under this section is in addition to any other tax imposed by law. In the case of any contract for the construction of highways, roads, streets, bridges, and buildings awarded prior to July 1, 1987, the contractor receiving the award is liable only for the use tax at the rate of tax in effect on the date of the contract.

SECTION 7. A new section to chapter 57-40.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional motor vehicle excise tax. There is imposed an excise tax at the rate of one-half of one percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state. The tax imposed under this section is in addition to any other tax provided by law.

SECTION 8. A new section to chapter 57-40.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional aircraft excise tax. There is imposed an excise tax at the rate of one-half of one percent on the purchase or lease of any aircraft which is otherwise taxable under this chapter. The tax imposed by this section is in addition to any other tax provided by law.

SECTION 9. AMENDMENT. Subsection 1 of section 57-43.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this section, a tax of ~~thirteen~~ seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.

SECTION 10. AMENDMENT. Subsection 1 of section 57-43.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of ~~thirteen~~ seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not

exempt. From July 1, 1983, through June 30, 1985, the tax imposed by this subsection on fuel consisting of a blend of diesel fuel and not less than ten percent recovered oil shall be four cents per gallon [3.79 liters] less than the nonagriculturally derived special fuel excise tax provided in this subsection. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

SECTION 11. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-03. Tax levied. A special excise tax of two percent is imposed on all sales of special fuel which are exempted from the tax imposed under section 57-43.2-02 to a special fuel user and on all sales of special fuels which are taxed under this chapter if that tax is later refunded to a special fuel user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section 57-43.1-08.

SECTION 12. EXPIRATION DATE. Sections 4, 6, 7, and 8 of this Act are effective for taxable events occurring after June 30, 1987, and before July 1, 1989, and are thereafter ineffective.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 688

SENATE BILL NO. 2217
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

ESTATE TAX FEDERALIZATION DATE

AN ACT to amend and reenact subsection 8 of section 57-37.1-01 and section 57-37.1-04 of the North Dakota Century Code, relating to the definition of the "United States Internal Revenue Code of 1954, as amended" for estate tax purposes and the computation of the estate tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 57-37.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "United States Internal Revenue Code of 1954, as amended" means the United States Internal Revenue Code of 1954 as amended through December 31, ~~1984~~ 1986, and also includes references to the Internal Revenue Code of 1986.

SECTION 2. AMENDMENT. Section 57-37.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-04. Computation of tax.

1. The amount of tax imposed upon the transfer of the North Dakota taxable estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. For the purposes of this section, "federal estate tax" means the tax imposed on transfers of estates of decedents pursuant to

the United States Internal Revenue Code of 1954, as amended, and "North Dakota taxable estate" means all property in a decedent's federal gross estate that has a situs in North Dakota.

2. When property subject to the tax imposed by this chapter qualifies for valuation based on its use under section 2032A of the Internal Revenue Code, it has the same value for North Dakota estate tax purposes as it has for federal estate tax purposes. If, after the final determination of the tax imposed by this chapter, the property valued under section 2032A of the Internal Revenue Code is transferred or otherwise fails to qualify and an additional tax is imposed under section 2032A(c) of the Internal Revenue Code, any increase in the credit for state death taxes must be reported by the personal representative to the tax commissioner within ninety days after final determination of the increased credit. Upon notification the tax commissioner shall reassess the estate tax.

Approved February 3, 1987
Filed February 3, 1987

CHAPTER 689

HOUSE BILL NO. 1325
(Representatives Goetz, Wald)
(Senator Dotzenrod)

ESTATE TAX REFUND INTEREST

AN ACT to amend and reenact section 57-37.1-07 and subsection 3 of section 57-37.1-08 of the North Dakota Century Code, relating to interest on estate tax payments or refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-37.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-07. Taxes payable as of date of death - interest rate. The tax imposed by this chapter shall be due and payable at the death of the decedent, and if not paid within fifteen months after the date of death, shall bear interest at the rate of one percent per month or fraction thereof to be computed from the expiration of fifteen months after death until the amount is paid. The tax commissioner may for good cause waive all or any part of any interest that attaches under the provisions of this section.

SECTION 2. AMENDMENT. Subsection 3 of section 57-37.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment shall be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid shall bear interest at the rate of two-thirds of one percent per month or fraction thereof to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 690

HOUSE BILL NO. 1381
(Representatives Oban, Dorso)
(Senators Mathern, Holmberg)

TAX CREDIT FOR EMPLOYING HANDICAPPED

AN ACT to create and enact three new subsections to section 57-38-01 of the North Dakota Century Code and a new section to chapter 57-38 of the North Dakota Century Code, relating to a tax credit for employers who hire developmentally disabled or chronically mentally ill employees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 57-38-01 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.

"Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:

- a. Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless in addition to one or more of these conditions, the person has a mental disorder.
- b. The declining mental abilities that accompany impending death.

- c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

"Developmental disability" has the same meaning as defined in section 25-01.2-01.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Income tax credit for employment of developmentally disabled or chronically mentally ill persons. Any taxpayer filing an income tax return under this chapter, except a return on which liability is determined under section 57-38-30.3, may claim a credit for a portion of the wages paid to a developmentally disabled or chronically mentally ill employee. The credit allowed under this section equals five percent of up to six thousand dollars in wages paid during the first twelve months of employment by the taxpayer for each developmentally disabled or chronically mentally ill employee of the taxpayer. Only wages actually paid during the taxpayer's taxable year may be considered for purposes of this section. An employee of a subcontractor is considered an employee of the contractor to the extent of any wages paid under the contract.

The total of credits allowed under this section may not exceed fifty percent of the taxpayer's liability under this chapter.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 691

HOUSE BILL NO. 1258
(Moore)INCOME TAX FEDERALIZATION AND MINIMUM
TAX

AN ACT to create and enact a new subsection to section 57-38-01 of the North Dakota Century Code, relating to alternative minimum taxable income; to amend and reenact subsections 3 and 8 of section 57-38-01, subsection 1 of section 57-38-01.4, and section 57-38-30 of the North Dakota Century Code, relating to the federalization date for income tax purposes, treatment of federal alternative minimum tax for corporate income tax purposes, and income tax treatment of subchapter S corporation income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"North Dakota alternative minimum taxable income" in the case of corporations means alternative minimum taxable income as computed under the Internal Revenue Code provisions in effect at the close of the corporation's taxable year, reduced by any interest received from obligations of the United States included in alternative minimum taxable income or in the computation of alternative minimum taxable income on the federal return, as reduced by the federal income tax deduction computed under subdivision c of subsection 1 of section 57-38-01.3, and either increased or decreased by the adjustments provided in subdivisions a and b of subsection 3 of section 57-38-01, with the remaining amount apportioned to North Dakota by the same fraction computed under the provisions of chapter 57-38, 57-38.1, or 57-59.

SECTION 2. AMENDMENT. Subsections 3 and 8 of section 57-38-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1954 1986, as amended to and including December 31, 1984 1986. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
- a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances where the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.
- b. Except that the deductions provided by the cost recovery provisions enacted as section 168 of the Internal Revenue Code, other than subsection (f)(8), cannot exceed seventy-five percent for the first taxable year beginning after December 31, 1982, and cannot exceed eighty-five percent for each of the next two taxable years beginning after December 31, 1983, for the purpose of computing North Dakota taxable income by individuals, estates, trusts, and corporations. Therefore, for the taxable year beginning after December 31, 1982, federal taxable income must be increased by twenty-five percent of any ACRS depreciation deducted in that taxable year for federal income tax purposes, and for each of the next two taxable years beginning after December 31, 1983, federal taxable income must be increased by fifteen percent of any ACRS depreciation deducted in each of the respective taxable years for federal income tax purposes. Provided, that one-half of the amount not allowed as a an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as a an accelerated cost recovery system depreciation deduction for the taxable year

beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as a an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.

- c. Provided, that the depreciation adjustments allowed in subdivision e b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.
 - d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.
8. "Taxable income" in the case of individuals, estates, trusts, and corporations shall mean the taxable income as computed for an individual, estate, trust, or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this act and chapter or other provisions of law. Except as otherwise expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.

SECTION 3. AMENDMENT. Subsection 1 of section 57-38-01.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the purposes of this chapter, any person as defined in section 57-38-01 and required to file a North Dakota income tax return who makes an election under subchapter S of the Internal Revenue Code of 1954, as amended, for federal income tax purposes shall have such status recognized and such person's taxable income shall be

computed as provided in subchapter S of the Internal Revenue Code of 1954, as amended, with the adjustments allowed by this chapter or other provisions of law. Income of a subchapter S corporation subject to tax for federal income tax purposes is also subject to state income tax at the corporate income tax rates imposed by section 57-38-30.

SECTION 4. AMENDMENT. Section 57-38-30 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income or the North Dakota alternative minimum taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which shall be levied, collected, and paid annually as in this chapter provided, and which shall be computed at the greater of the following rates two calculations:

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.
- ~~2.~~ b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
- ~~3.~~ c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
- ~~4.~~ d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
- ~~5.~~ e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
- ~~6.~~ f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. Five percent of the North Dakota alternative minimum taxable income. The calculation for North Dakota alternative minimum taxable income applies only if the corporation's federal alternative minimum tax liability exceeds the corporation's regular federal tax liability.

SECTION 5. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 1986. Sections 1 and 4 of this Act are effective for taxable years beginning after December 31, 1988.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 692

HOUSE BILL NO. 1261
(Moore)

FEDERAL INCOME TAX DEDUCTION

AN ACT to amend and reenact subdivision c of subsection 1 of section 57-38-01.2 and subdivision c of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to income tax deductions for federal income taxes paid; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Reduced by the amount of federal income tax liability, but not social security and self-employment taxes, as computed under chapter 1 of the Internal Revenue Code of 1954, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that such taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. However, such federal income tax liability shall be reduced by all credits thereon except credits for federal income tax withholding payments, estimates of federal income tax, and income taxes of foreign countries. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax shall be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 2. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax shall be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 693

SENATE BILL NO. 2343
(Satrom, Wright)

INCOME TAX DEDUCTION FOR DIVIDENDS FROM DOMESTIC FINANCIAL INSTITUTIONS

AN ACT to amend and reenact subdivision i of subsection 1 of section 57-38-01.2 and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to the domestic dividend exclusion for income tax purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision i of subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- i. Reduced by any dividends or income, up to a maximum of fifteen thousand dollars, received from stock or interest in any corporation and included in the adjusted gross income as computed for federal income tax purposes where the income of such corporation has been assessed and tax paid by the corporation under this chapter or chapter 57-35, 57-35.1, or 57-35.2 and such dividends or income was received by the taxpayer as income during the income year if such corporation has reported the name and address of each North Dakota resident owning stock and the amount of dividends or income paid each such person during the year; provided, that when only part of the income of any corporation shall have been assessed and corporation income tax paid thereon under this chapter or chapter 57-35, 57-35.1, or 57-35.2, only a corresponding part of the dividends or income received therefrom and included in federal adjusted gross income shall be subtracted. The commissioner is hereby authorized to prescribe rules and regulations to implement this subdivision to avoid injustice to taxpayers, to prevent duplication of deductions, and to eliminate taxation of income not fairly and properly taxable under this chapter.

SECTION 2. AMENDMENT. Subdivision g of subsection 1 of section 57-38-01.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- g. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter or chapter 57-35, 57-35.1, or 57-35.2, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation shall have been assessed and income tax paid under this chapter or chapter 57-35, 57-35.1, or 57-35.2, only a corresponding part of the dividends or income received therefrom shall be deducted.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 694

HOUSE BILL NO. 1240
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

INCOME TAX REVISION

AN ACT to amend and reenact subdivisions m and n of subsection 1 of section 57-38-01.2, section 57-38-35.1, subsection 2 of section 57-38-38, subsection 2 of section 57-38-40, subsection 3 of section 57-38-42, sections 57-38-64, 57-38-70, 57-38-71, 57-38-72, and 57-38-74 of the North Dakota Century Code, relating to income tax procedures; and to repeal chapter 57-38.2 of the North Dakota Century Code, relating to income averaging.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivisions m and n of subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer ~~certifying~~ stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or

family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) A resident of this state; and
 - (2) Receiving more than half one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision; and
 - (3) Intending to use any farmland to be purchased or rented for agricultural purposes; and
 - (4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board of vocational education or an equivalent program approved by the commissioner of agriculture; and
 - (5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.
- n. Reduced by the amount of interest received during that taxable year on a contract on the sale of any land, buildings, improvements, and equipment associated with the land, buildings, or improvements, used or useful in connection with a revenue-producing enterprise to a beginning businessman, excluding beginning farmers as defined in subdivision m. The contract must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service to meet gift tax requirements before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a ~~notarized~~ statement from the buyer containing a list of the buyer's assets and debts and giving the buyer's net worth, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including that person's

dependents and spouse, if any, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings is not to be included. This statement is to be filed along with the income tax return. For the purposes of this subdivision, "beginning businessman", excluding beginning farmers as defined in subdivision m, means any person who is:

- (1) Is a A resident of this state.
- (2) Receives Receiving more than one-half his of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intends Intending to use any revenue-producing enterprise that he wishes to purchase purchased or rented for business purposes.
- (4) Has had adequate training Adequately trained, by experience or education, in the type of revenue-producing enterprise which he that person wishes to begin.
- (5) Has The owner of property with a net worth, including the net worth of property of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars.

SECTION 2. AMENDMENT. Section 57-38-35.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35.1. Minimum refunds and collections - Application of refunds.

1. No refunds shall be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars.
2. No remittance of tax need be made nor any assessment or collection of tax should be made unless the amount, is at least five dollars, including penalties and interest.
3. All refunds and credits for overpayment to any taxpayer, including excess income tax withheld or overpayment of estimated tax, may be applied to payment of taxpayer's unpaid tax, interest, or penalty or delayed until taxpayer's delinquent returns have been filed.

- 4- Interest of nine percent per annum shall be allowed and paid upon any overpayment of tax from sixty days after the due date of the return or after the date such return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.
- 5- if the amount of tax imposed by this chapter is reduced by reason of a carryback of a net operating loss or net capital loss, the interest in this section shall not start accruing until after the close of the taxable year in which the net operating loss or net capital loss occurred.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-38 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If there is a change in taxable income or adjusted federal income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or adjusted federal income tax liability stated in the return as filed, any additional tax determined due may be assessed any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.

SECTION 4. AMENDMENT. Subsection 2 of section 57-38-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. if the A claim for refund relates to an overpayment attributable to arising from a net operating loss carryback, in lieu of the three-year period within which a taxpayer may apply to the tax commissioner for revision of the tax assessed as prescribed in this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback or capital loss carryback, can be filed up to three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection are effective for all carrybacks filed for taxable years beginning on or after December 31, 1986.

SECTION 5. AMENDMENT. Subsection 3 of section 57-38-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. All information returns required under subsection 1 shall be made on the basis of a calendar year for payments made during the calendar year and shall be filed with the tax commissioner on or before April fifteenth of the year following the calendar year for which made the due date for filing similar returns with the internal revenue

service. All partnership returns required under subsection 2 shall be made on or before the fifteenth day of the fourth month following the close of the fiscal year of the partnership required to make the return, or if the return is made on the basis of a calendar year, then the return shall be made on or before the fifteenth day of April in the year following the calendar year for which such return is made.

SECTION 6. AMENDMENT. Section 57-38-64 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-64. Amendment of declaration. Any person may amend a declaration of estimated income tax and make the adjusted payments of tax due thereon under the regulations of the tax commissioner. A corporation may, after the close of the taxable year and before the fifteenth day of the fourth month thereafter, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. Such a claim for credit or refund must be verified and paid as are other claims against the state. No application under this section may be allowed unless the amount of the adjustment exceeds five hundred dollars and no interest may accrue or be paid thereon. Refunds will be payable for taxable years beginning after July 1, 1987.

SECTION 7. AMENDMENT. Section 57-38-70 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-70. Claim for income tax deduction for land sale or rental to a beginning farmer. In order for a taxpayer to qualify for the deductions provided in sections 57-38-67 through 57-38-70, the taxpayer shall file with his the taxpayer's state income tax return a ~~notarized~~ statement from the beginning farmer who purchased or rented land ~~from him certifying~~ stating that ~~he meets~~ all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require have been met. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In order for a taxpayer to qualify for the deduction for rental income provided in section 57-38-69, the taxpayer shall ~~certify~~ state on his the taxpayer's tax return that any rental arrangement with any other person was not canceled for the purpose of qualifying for this deduction.

SECTION 8. AMENDMENT. Section 57-38-71 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-71. Definitions applicable to sections 57-38-71 through 57-38-74. As used in sections 57-38-71 through 57-38-74, unless the context otherwise requires:

1. "Beginning businessman", excluding beginning farmers as defined in subdivision m of subsection 1 of section 57-38-01.2, means any person who:
 - a. Is a resident of this state.
 - b. Receives more than one-half ~~his~~ of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which a deduction will be claimed under sections 57-38-71 through 57-38-74.
 - c. Intends to use any revenue-producing enterprise ~~that he wishes to purchase or rent~~ purchased or rented for business purposes.
 - d. Has had adequate training, by experience or education, in the type of revenue-producing enterprise which ~~he~~ that person wishes to begin.
 - e. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.
2. "Businessman" means any person owning a revenue-producing enterprise in North Dakota, except that any person who acquires such an enterprise for the purpose of obtaining the income tax deduction provided for in sections 57-38-71 through 57-38-74 is not deemed to be a businessman.
3. "Revenue-producing enterprise" means any real property, buildings, and improvements on the property or to the buildings, and any equipment located on the property or in the buildings, or any personal property used or useful in connection with a revenue-producing enterprise engaged in any industry or business not prohibited by the Constitution of North Dakota or the laws of this state.

SECTION 9. AMENDMENT. Section 57-38-72 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-72. Income tax deduction for revenue-producing enterprise sale to beginning businessman. Any businessman who sells a revenue-producing enterprise to a beginning businessman is entitled to a reduction in the businessman's taxable income ~~for the year in which the sale occurred~~ in an amount equal to all income realized and otherwise subject to state income taxes after consideration of any capital gains treatment. ~~In the case of a contract the year in which the sale occurred,~~ for purposes of this section, means the year the

contract is entered into by the businessman and the beginning businessman, regardless of the amount of payment, if any, that is made in that year.

SECTION 10. AMENDMENT. Section 57-38-74 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-74. Claim for income tax deduction for revenue-producing enterprise sale or rental to a beginning businessman. To qualify for the deduction provided in sections 57-38-71 through 57-38-74, the taxpayer shall file with the taxpayer's state income tax return a ~~notarized~~ statement from the beginning businessman who purchased or rented the revenue-producing enterprise containing a list of the assets, debts, and net worth of the beginning businessman, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer shall be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. To qualify for the deduction for rental income provided in section 57-38-73, the taxpayer shall ~~certify state~~ on the taxpayer's tax return that any rental arrangement with any other person was not canceled for the purpose of qualifying for this deduction.

SECTION 11. REPEAL. Chapter 57-38.2 of the North Dakota Century Code is hereby repealed.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 695

HOUSE BILL NO. 1901
Select Committee on Finance and Taxation
(At the request of the Office of Management and Budget)
(Approved by the Committee on Delayed Bills)

INCOME TAX WITHHOLDING AND RATE INCREASE

AN ACT to amend and reenact section 57-38-29, subsection 2 of section 57-38-30.3, sections 57-38-59, 57-38-60, 57-38-60.1, 57-38-61, and 57-38-62 of the North Dakota Century Code, relating to the rate of income tax on individuals and general income tax withholding and payment of estimated tax for income tax purposes; to repeal section 57-38-58 of the North Dakota Century Code, relating to definitions for withholding purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-29 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-29. Rate of tax on individuals. A tax is hereby imposed upon every individual, to be levied, collected, and paid annually with respect to the taxable income of such individual as defined in this chapter, computed at the following rates:

1. On taxable income not in excess of three thousand dollars, a tax of two and sixty-seven hundredths percent.
2. On taxable income in excess of three thousand dollars and not in excess of five thousand dollars, a tax of three four percent.
3. On taxable income in excess of five thousand dollars and not in excess of eight thousand dollars, a tax of four five and thirty-three hundredths percent.
4. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of five six and sixty-seven hundredths percent.

5. On taxable income in excess of fifteen thousand dollars and not in excess of twenty-five thousand dollars, a tax of ~~six~~ eight percent.
6. On taxable income in excess of twenty-five thousand dollars and not in excess of thirty-five thousand dollars, a tax of ~~seven~~ nine and thirty-three hundredths percent.
7. On taxable income in excess of thirty-five thousand dollars and not in excess of fifty thousand dollars, a tax of ~~eight~~ ten and sixty-seven hundredths percent.
8. On taxable income in excess of fifty thousand dollars, a tax of ~~nine~~ twelve percent.

* SECTION 2. AMENDMENT. Subsection 2 of section 57-38-30.3 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. This tax shall be ~~ten and one-half~~ fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.

SECTION 3. AMENDMENT. Section 57-38-59 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-59. Withholding from wages of ~~nonresident~~ employees - Penalty.

1. Every employer making payment of wages to ~~nonresident~~ employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of ~~1954~~, as amended 1986, and as hereafter amended, as will approximate the income taxes due the state; ~~provided, that no employer shall be required to deduct and withhold any amount on the first six hundred dollars of annual wages paid to a nonresident employee unless such employee is employed for a period of sixty days or more within any one year.~~ The amount of tax withheld shall be computed without regard to any other amount required to be withheld thereunder, but the tax withheld shall as closely as possible pay any tax liability imposed by this chapter.
2. In the event that the tax deducted and withheld under ~~the provisions of~~ subsection 1 should prove to be disproportionate to the tax liability, the tax commissioner may adjust the percentage ~~which that~~, when withheld, will, as closely as may be possible, pay the income tax liability imposed by this chapter.

* NOTE: Section 57-38-30.3 was also amended by section 39 of House Bill No. 1050, chapter 73.

3. The tax commissioner may, in lieu of the requirement above for deducting and withholding tax based upon a percentage of federal income tax withheld, adopt by regulation rule tax tables which that, when the tax provided for in the tables is withheld, will, as closely as possible, pay the income tax liability imposed by this chapter. When adopted by the tax commissioner said tables shall be followed by every employer required to deduct and withhold any tax imposed by this chapter.
- 4- Every employer shall deduct and withhold from every nonresident employee's wages the amounts required to be deducted and withheld from a nonresident employee's wages until such time as the employee has filed with his employer a signed certificate, in such form as the tax commissioner shall provide, that such employee entitled to wages is a resident of the state of North Dakota as defined for withholding purposes. Such certificate shall contain a written declaration that it is made under the penalties provided in section 12-1-11-02. Once filed, a certificate shall remain in effect with the employer with whom it is filed, until the employee's status shall have changed to that of a nonresident as defined in subsection 4 of section 57-38-58. The employee shall give written notice to his employer within fifteen days after such change in status. The employer upon receiving such written notice shall deduct and withhold from the employee's wages as provided in this section until the employee files with the employer the signed certificate referred to herein. Any employee willfully failing to give written notice to his employer of his change in status as required herein within the time prescribed shall be subject to the penalty provided for in subsection 3 of section 57-38-45. Employers shall be required to make the certificate of residence available to the tax commissioner upon request.

SECTION 4. AMENDMENT. Section 57-38-60 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-60. Employer's returns and remittances.

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all nonresident employees during the preceding calendar quarter under the provisions of section 57-38-59; provided, that the tax commissioner may alter the time or period for making reports and payment when in his the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under ~~the provisions of~~ this section which shall show the total amount of wages paid to ~~his nonresident~~ employees, the amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under ~~the provisions of~~ this chapter ~~that which~~ was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.
3. Every employer shall make an annual return to the tax commissioner on forms provided and approved by ~~him~~ the tax commissioner, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state tax deducted and withheld, for each ~~nonresident~~ employee during the calendar year and shall file the same with the tax commissioner on or before the thirty-first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such ~~regulations~~ rules as may be prescribed by the tax commissioner, provide each ~~nonresident~~ employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with ~~the provisions of~~ section 57-38-59, and said statement shall be made available to the employee on or before the thirty-first day of January of the year following that for which the report is made.
4. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts ~~he shall be~~ the employer is considered the taxpayer.
5. Every employer who deducts and withholds any amounts under ~~the provisions of~~ section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in

section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

6. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required, to either make a cash deposit or post with ~~him~~ the tax commissioner a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages, but not to exceed five thousand dollars.

SECTION 5. AMENDMENT. Section 57-38-60.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-60.1. Corporate officer liability. If a corporation is an employer, ~~as defined in subsection 3 of section 57-38-58,~~ and fails for any reason to file the required returns or to pay the tax due, the chairman, president, or chief operating officer, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 6. AMENDMENT. Section 57-38-61 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections ~~57-38-58,~~ 57-38-59, 57-38-60, and 57-38-60.1. The term "employer" as used in sections ~~57-38-58,~~ 57-38-59, 57-38-60, and 57-38-60.1 also means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to adopt rules includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in this state.

*** SECTION 7. AMENDMENT.** Section 57-38-62 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 57-38-62 was also amended by section 1 of House Bill No. 1259, chapter 701.

57-38-62. Declaration of estimated income.

1. All nonresident individual taxpayers shall, and resident individual taxpayers may individuals, estates, and trusts that are required to file a federal declaration of estimated tax shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year, containing such information as the tax commissioner may prescribe by rules and regulations, if their estimated tax due the state from all sources, including wages, salaries, bonuses, or other emoluments, not subject to withholding, can reasonably be expected to exceed one exceeds two hundred dollars and, except for nonresidents who have not filed a return in this state for the previous year, their previous year's state income tax liability exceeded two hundred dollars.
2. All corporate taxpayers shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the taxable year containing such information as the tax commissioner may prescribe by rules and regulations, if the taxpayer's estimated tax due the state from sources or business done in this state can reasonably be expected to exceed five thousand dollars and if their previous year's state income tax liability exceeded five thousand dollars.
3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration of estimated tax as required by this chapter, or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year.
4. For purposes of this section, "estimated tax" means the amount that a person estimates to be income tax under this chapter for the taxable year less the amount of any credits allowable, including tax withheld.

SECTION 8. REPEAL. Section 57-38-58 of the North Dakota Century Code is hereby repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved December 9, 1986
Filed December 9, 1986

CHAPTER 696

HOUSE BILL NO. 1686
(A. Hausauer, Strinden, Mertens, Hoffner)
(Approved by the Committee on Delayed Bills)

INCOME SURTAX

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a surtax based on income tax liability of individuals, estates, or trusts; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Surtax on income tax liability of individuals, estates, and trusts -
Exception to withholding. A surtax is hereby imposed on the income of every individual, estate, and trust that is required to file an income tax return under this chapter. The tax imposed by this section is equal to ten percent of the taxpayer's income tax liability as determined under section 57-38-29 or 57-38-30.3. Notwithstanding any other provision of this chapter, calculation of withholding amounts and payments of estimated taxes need not be made on the basis of the tax imposed under this section and are to be based only on tax liability as determined under section 57-38-29 or 57-38-30.3.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first taxable year beginning after December 31, 1986, and is thereafter ineffective.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 697

HOUSE BILL NO. 1645
(Representative Strinden)
(Senator Olson)

INCOME TAX RESEARCH CREDIT

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a corporate income tax credit for research and experimental expenditures; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Corporate income tax credit for research and experimental expenditures. Any corporation is allowed a credit against the tax imposed under this chapter for the taxable year equal to eight percent of the first one and one-half million dollars of the qualified research expenses for the taxable year in excess of the base period research expenses and equal to four percent of all qualified research expenses for the taxable year more than one and one-half million dollars in excess of the base period research expenses.

1. For purposes of this section:
 - a. "Base period research expenses" means base period research expenses as defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)].
 - b. "Qualified research" means qualified research as defined in section 41(d) of the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include research conducted outside the state of North Dakota.
 - c. "Qualified research expenses" means qualified research expenses as defined in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it does not include expenses incurred for basic research conducted outside the state of North Dakota.

2. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter.
3. In the case of a corporation which is a partner in a partnership, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the corporation's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the corporation's taxable income which is allocable or apportionable to the corporation's interest in the trade, business, or entity.
4. If the amount of the credit determined under this section for any taxable year exceeds the limitation under subsection 2, the excess may be used as a research credit carryback to each of the three preceding taxable years and a research credit carryover to each of the fifteen succeeding taxable years. The entire amount of the excess unused credit for the taxable year shall be carried first to the earliest of the taxable years to which the credit may be carried and then to each successive year to which the credit may be carried. The amount of the unused credit which may be added under this subsection may not exceed the taxpayer's liability for tax less the research credit for the taxable year.
5. If a taxpayer acquires or disposes of the major portion of a trade or business or the major portion of a separate unit of a trade or business in a transaction with another taxpayer, the taxpayer's qualified research expenses and base period shall be adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code [26 U.S.C. 41(f)(3)].

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1987.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 698

HOUSE BILL NO. 1260
(Moore)

DELINQUENT INCOME TAX INTEREST

AN ACT to amend and reenact subsection 1 of section 57-38-45 of the North Dakota Century Code, relating to the rate of interest imposed on income taxes paid after the due date; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-45 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer shall be subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the current adjusted rate of twelve percent established under 26 U.S.C. 6621(a)(2) per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for such payment, there shall be added to the tax interest at the rate of one percent one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there shall be added to the additional tax due

interest at the rate of one percent one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.

- d. If the mathematical verification of a taxpayer's return results in additional tax due, there shall be added to the additional tax interest at the rate of one percent one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
- e. Notwithstanding the interest rates provided for in the preceding subdivisions, or other sections of this chapter, if the prime rate charged by the Bank of North Dakota on September fifteenth of any year is fifteen percent or more per annum, the interest rate to be charged per annum or for each month or fraction thereof, as the case may be, for the entire succeeding calendar year shall be eighteen percent per annum or one and one-half percent per month. The rate of interest in effect under this section on the due date of a return applies continuously to any interest accumulating on liability under the return until the liability is paid in full.

SECTION 2. EFFECTIVE DATE. This Act is effective for interest accruing on liability under returns with a due date after June 30, 1987.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 699

HOUSE BILL NO. 1288
(Representatives Dorso, Gunsch)
(Senator W. Meyer)

INCOME TAX OVERPAYMENT INTEREST

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to interest on overpayment of income taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interest payments. Interest at the adjusted rate established under 26 U.S.C. 6621(a)(2) per annum must be allowed and paid upon overpayments of tax as follows:

1. Interest on refunds arising from excess income tax withholding or overpayment of declarations of estimated tax accrues for payment from sixty days after the due date of the return or after the date the return was filed, whichever comes later.
2. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from sixty days after the due date of the return or after the date the return was filed or after the date the tax due was fully paid, whichever comes later.
3. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from sixty days after the date an amended return claiming a credit or refund because of an operating loss carryback or capital loss carryback is filed with the tax commissioner.
4. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

5. The rate of interest in effect under this section on the date when interest begins to accrue under this section applies continuously to any interest accumulating on overpayments under the return until the refund is paid in full.

SECTION 2. EFFECTIVE DATE. This Act is effective for interest accruing on refunds under returns with a due date after June 30, 1987.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 700

HOUSE BILL NO. 1062
(Legislative Council)
(Interim Tax Administration Committee)

INCOME TAX SECRECY

AN ACT to amend and reenact subsection 1 of section 57-38-57 of the North Dakota Century Code, relating to secrecy as to income tax returns and prohibiting disclosure as to whether or not a taxpayer has filed an income tax return or report; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-57 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except when otherwise directed by judicial order, or as is otherwise provided by law, the tax commissioner, his the tax commissioner's deputies, agents, clerks, and other officers and employees, shall not divulge nor make known, in any manner, whether or not any report or return required under this chapter has been filed, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter, including the copy or any portion thereof or information reflected in the taxpayer's federal income tax return that the tax commissioner may require to be attached to, furnished with, or included in the taxpayer's state income tax return. This provision shall not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter. This section does not prohibit disclosure of the fact that a report or return required under this chapter has not been filed if the disclosure is made to further a tax investigation being conducted by the tax commissioner. Reports and returns shall be preserved for three years and thereafter until the tax commissioner orders them to be destroyed.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved April 15, 1987
Filed April 15, 1987

CHAPTER 701

HOUSE BILL NO. 1259
(Moore)

ESTIMATED CORPORATE INCOME TAX

AN ACT to amend and reenact subsection 3 of section 57-38-62 of the North Dakota Century Code, relating to payment of estimated corporate income tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 3 of section 57-38-62 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration of estimated tax as required by this chapter, or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year. Notwithstanding the other provisions of this section, no penalty is due if the underpayment of any installment comes within the exception provided in the Internal Revenue Code of 1954 for recurring seasonal income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1986.

Approved March 20, 1987
Filed March 23, 1987

* NOTE: Section 57-38-62 was also amended by section 7 of House Bill No. 1901, chapter 695.

CHAPTER 702

HOUSE BILL NO. 1064
(Legislative Council)
(Interim Taxation Committee)

UNITARY CORPORATE INCOME TAXATION

AN ACT to provide that corporate income taxpayers may elect to use a water's edge unitary combination approach to apportion income for corporate income tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act unless the context or subject matter otherwise requires:

1. "Affiliated corporation" means a corporation more than fifty percent of the voting stock of which is owned directly or indirectly by another corporate member of the water's edge combined group.
2. "Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge corporate group.
3. "Existing corporation" means a corporation that filed a North Dakota income tax return for any year after taxable year 1979 or was a successor to or unitary with a corporation that filed a North Dakota income tax return for any year after taxable year 1979.
4. "Foreign dividends" means any dividend received by a member of the water's edge group from any affiliated corporation incorporated outside the fifty states and District of Columbia, including amounts included in income computed under sections 951 through 954 of the Internal Revenue Code.

5. "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has less than twenty percent of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations outside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
6. "New corporation" means a corporation that has not filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a corporation which is a successor to or which is affiliated with a corporation that filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a business reorganization or acquisition, except a corporation with no previous activity in North Dakota which acquires an existing corporation and increases and maintains the threshold activity of the existing corporation by twenty-five percent or more shall be treated as a new corporation.
7. "Threshold activity" means the yearly average combined property and payroll in North Dakota of a corporation and its affiliates for the previous three years.
8. "Water's edge group" includes the following entities:
 - a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
 - b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal

Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.

- c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.
 - d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.
 - e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by the taxpayer and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.
9. "Worldwide combined report" means a combined report with respect to a unitary affiliated group irrespective of the country or countries in which any member of the affiliated group is incorporated or conducts business activity.

SECTION 2. Water's edge election. A corporation required to file a worldwide unitary combined report must continue to do so unless it elects to apportion its income using the water's edge method.

1. A corporation electing to file using the water's edge method must comply with the following:
 - a. The election must be made on the return as originally filed.
 - b. The corporation may not reduce taxable income for federal taxes paid or accrued as allowed by subdivision c of subsection 1 of section 57-38-01.3.
 - c. The water's edge election is binding for ten consecutive taxable years after making the election.
 - d. The corporation must file with the tax commissioner a domestic disclosure spreadsheet.
2. All corporations electing the water's edge method must include the income and apportionment factors of the water's edge group. Foreign dividends and income from 80/20 corporations must be included as follows:
 - a. An existing corporation must include fifty percent of foreign dividends and sixty percent of income from 80/20 corporations. However, an existing corporation that increases and maintains a threshold activity by twenty-five percent or more, but not by business

reorganization or acquisition, is only required to include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.

- b. A new corporation must include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.
- c. For taxable years beginning after December 31, 1994, all corporations making the water's edge election may reduce the inclusion to include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.

SECTION 3. Conditions imposed by tax commissioner. The tax commissioner may impose necessary conditions other than the imposition of worldwide combination to prevent tax avoidance or to clearly reflect income in accordance with chapter 57-38.1.

SECTION 4. Presumptions and burden of proof. A taxpayer and its affiliates are presumed to be a part of a unitary business and all income of that business is presumed to be apportionable business income except as otherwise provided in this Act. A taxpayer has the burden of proof regarding the issue of whether or not a corporation is a member of a water's edge combined group.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 21, 1987
Filed April 22, 1987

CHAPTER 703

HOUSE BILL NO. 1546
(Representative Haugen)
(Senator Dotzenrod)

REPLACEMENT FARM MACHINERY SALES TAX

AN ACT to amend and reenact subsection 3 of section 57-39.2-01 and subsection 4 of section 57-40.2-01 of the North Dakota Century Code, relating to the definitions of gross receipts and purchase price.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-39.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. Provided, further, when tangible personal property is taken in trade or in a series of trades as a credit or part payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to the sales tax imposed by this chapter when sold or will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, the credit or trade-in value allowed by the retailer are not gross receipts. Provided, further, on all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received

for the loss from an insurance company. The purchaser must provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed. "Gross receipts" also means, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.

SECTION 2. AMENDMENT. Subsection 4 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade-ins allowed and taken on sales shall not be included. "Purchase price" shall also mean, in those instances where sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it shall be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. Where records are not kept as to the tonnage of sand or gravel severed from the soil it shall be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel shall be equal to one and one-half tons [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser must provide the seller with a notarized statement from the insurance company verifying that the original farm machine was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 704

HOUSE BILL NO. 1195
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

OUT-OF-STATE RETAIL SALES TAXES

AN ACT to amend and reenact subsection 8 of section 57-39.2-01 and subsection 6 of section 57-40.2-01 of the North Dakota Century Code, relating to collection of sales and use taxes by out-of-state retailers; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 8 of section 57-39.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the

* NOTE: Subsection 8 of section 57-39.2-01 was also amended by section 2 of Senate Bill No. 2557, chapter 687.

purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

SECTION 2. AMENDMENT. Subsection 6 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on April 1, 1987.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 705

SENATE BILL NO. 2901
(Select Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)
(Approved by the Committee on Delayed Bills)

SALES, USE, AND MOTOR VEHICLE EXCISE TAX RATES INCREASED

AN ACT to amend and reenact sections 57-39.2-02.1, 57-39.2-03.2, 57-39.2-08.2, 57-40.2-02.1, and 57-40.3-02 of the North Dakota Century Code, relating to the rate of sales tax, use tax, and motor vehicle excise tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of ~~four~~ five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts

charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin.

- d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
2. There is hereby imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within the state of North Dakota to consumers or users.
 3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to ~~April 1, 1983~~ December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 2. AMENDMENT. Section 57-39.2-03.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-03.2. Sales tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of ~~five~~ six percent on the gross receipts of retailers from all sales at retail of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

SECTION 3. AMENDMENT. Section 57-39.2-08.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

- 1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$0.01 to \$0.15	no tax
\$0.16 to \$0.31	1¢ tax
\$0.32 to \$0.51	2¢ tax
\$0.52 to \$0.71	3¢ tax
\$0.72 to \$1.00	4¢ tax
Each additional \$1.00 - 4¢ additional tax, or	
each additional 25¢ or fraction thereof over	
\$1.00 - 1¢ additional tax	
<u>\$0.16 through \$0.20</u>	<u>1¢ tax</u>
<u>\$0.21 through \$0.40</u>	<u>2¢ tax</u>
<u>\$0.41 through \$0.60</u>	<u>3¢ tax</u>
<u>\$0.61 through \$0.80</u>	<u>4¢ tax</u>
<u>\$0.81 through \$1.00</u>	<u>5¢ tax</u>
<u>Each additional \$1.00 - 5¢ additional tax, or</u>	
<u>each additional 20¢ or fraction thereof over</u>	
<u>\$1.00 - 1¢ additional tax.</u>	

- 2. On retail sales of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.

SECTION 4. AMENDMENT. Section 57-40.2-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-02.1. Use tax imposed.

- 1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes and for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, an excise tax is

imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of ~~four~~ five percent of the purchase price of such property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of ~~four~~ five percent of the fair market value of such property at the time it was brought into this state.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of such mobile homes used for residential or business purposes and of such farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to ~~April 1, 1983~~ December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 5. AMENDMENT. Section 57-40.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-02. Tax imposed. There is hereby imposed an excise tax at the rate of ~~four~~ five percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 1986.

Approved December 5, 1986
Filed December 8, 1986

CHAPTER 706

HOUSE BILL NO. 1668
(Representatives Strinden, Mertens)
(Senators Heigaard, Holmberg)

SALES TAX INCREASE EMERGENCY

AN ACT to create and enact section 7 to Senate Bill No. 2901, as approved by the fiftieth legislative assembly, which relates to the rate of the sales tax, use tax, and motor vehicle excise tax, and declaring that Act to be an emergency measure; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 7 to Senate Bill No. 2901, as approved by the fiftieth legislative assembly, is hereby created and enacted to read as follows:

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 4, 1987
Filed March 4, 1987

CHAPTER 707

SENATE BILL NO. 2406
(Satrom)

COIN-OPERATED AMUSEMENT TAXATION

AN ACT to amend and reenact subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, relating to imposition of sales taxes on gross receipts from the playing of any machine for amusement or entertainment in response to the use of a coin.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.

* NOTE: Section 57-39.2-02.1 was also amended by section 3 of Senate Bill No. 2557, chapter 687.

- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

Approved April 4, 1987

Filed April 6, 1987

CHAPTER 708

HOUSE BILL NO. 1337
(Moore, Dorso)

CONTRACTORS' SALES TAX RATE

AN ACT to amend and reenact subsection 3 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, relating to the rate of sales or use tax which applies to contractors; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-39.2-02.1 of the North Dakota Century Code as contained in section 1 of Senate Bill No. 2901, as approved by the fiftieth legislative assembly, is hereby amended and reenacted to read as follows:

3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 19, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date ~~of contract~~ the bid was submitted.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective to January 1, 1987.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 709

SENATE BILL NO. 2077
(Legislative Council)
(Interim Taxation Committee)

**SALES OF EXEMPT GROUPS IN COMPETITION
WITH RETAILERS**

AN ACT to amend and reenact subsections 4 and 24 of section 57-39.2-04 of the North Dakota Century Code, relating to limitations upon exemptions of certain sales from sales taxes when in competition with retailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 24 of section 57-39.2-04 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the activities are held in a publicly owned facility, where the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15-29-13. This exemption does not apply to regular retail sales that are in direct competition with retailers.
24. Gross receipts from all sales ~~otherwise taxable under this chapter~~ when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, or intermediate care facility licensed by the state department of health, and boarding homes for the aged and infirm licensed by the department of human services.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 710

HOUSE BILL NO. 1399
(Representatives Belter, Kent)
(Senators Nelson, Dotzenrod)

ADJUVANT SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 8 of section 57-39.2-04 and subsection 9 of section 57-40.2-04 of the North Dakota Century Code, relating to the sales and use tax exemption for adjuvants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 57-39.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Gross receipts from sales of adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

SECTION 2. AMENDMENT. Subsection 9 of section 57-40.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. ~~Commercial~~ Adjuvants required by the chemical label for application of a product warranty, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 711

**HOUSE BILL NO. 1561
(O. Hanson)**

CHURCH SUPPER SALES TAXES

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for gross receipts from an annual church supper or bazaar held in a publicly owned facility.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. A new subsection to section 57-39.2-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from sales of tickets or admissions to, or sales made at, an annual church supper or bazaar held in a publicly owned facility. For purposes of this subsection, "annual" means occurring not more than once in any calendar year.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 712

SENATE BILL NO. 2263
(Committee on Finance and Taxation)
(At the request of the Tax Commissioner)

FOOD STAMP EXEMPTION

AN ACT to amend and reenact section 57-39.2-04.1, subsection 2 of section 57-39.2-11, subsection 2 of section 57-39.2-12.1, section 57-40.2-04.1, and subsection 2 of section 57-40.2-07.1 of the North Dakota Century Code, relating to the tax commissioner's authority to change filing requirements, nonavailability of compensation for administrative expenses, deduction for administrative expenses for filing sales and use tax returns, and sales and use tax exemption for food and food products purchased with food coupons issued by the United States department of agriculture.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-04.1. Sales tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by this chapter. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. Beginning on October 1, 1987, food or food products purchased for human consumption with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as

amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.

SECTION 2. AMENDMENT. Subsection 2 of section 57-39.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner, if he deems it necessary or advisable in order to ensure the payment of the tax imposed by this chapter, or if he deems it practical, may require returns and payment of the tax to be made for annual periods or other than quarterly or monthly periods; the provisions of this chapter to the contrary notwithstanding. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is not allowed under this section unless the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07.

SECTION 3. AMENDMENT. Subsection 2 of section 57-39.2-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed two hundred fifty dollars per quarterly period eighty-five dollars per month for permitholders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner.

SECTION 4. AMENDMENT. Section 57-40.2-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-04.1. Use tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

Beginning on October 1, 1987, food or food products purchased for human consumption with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.

SECTION 5. AMENDMENT. Subsection 2 of section 57-40.2-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed two hundred fifty dollars per quarterly period eighty-five dollars per month for permitholders filing on a monthly basis for each business location which has been issued a sales or use tax permit by the commissioner.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 713

SENATE BILL NO. 2441
(Senator Richard)
(Representatives P. DeMers, Wilkie)

ALCOHOLIC BEVERAGE SALES TAX

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to inclusion of the sales taxes on sales of alcoholic beverages in the purchase price of the alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sales tax on alcoholic beverages may be included in purchase price. Notwithstanding any other provision of law, the taxes imposed by this chapter upon the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or for consumption off the premises, may be included in the purchase price of the alcoholic beverages.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 714

SENATE BILL NO. 2385
(Senator Richard)
(Representative Brokaw)

BIENNIUM-ENDING SALES TAX RETURNS

AN ACT to amend and reenact subsection 1 of section 57-39.2-12 of the North Dakota Century Code, relating to the due date of the last sales and use tax return for the 1987-1989 biennium.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The tax levied under this chapter shall be due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter shall be payable monthly on or before the last day of the next succeeding month, except tax collected during May ~~1987~~ 1989 is payable on or before the twenty-second day of June ~~1987~~ 1989. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due shall be those prescribed in section 57-39.2-18. If the total of sales subject to such taxes decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer shall return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax shall become due immediately prior to the sale or discontinuance of such business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 57-39.2-18.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 715

SENATE BILL NO. 2555

(Ingstad)

(Approved by the Committee on Delayed Bills)

OUT-OF-STATE BUSINESS TAXATION

AN ACT to amend and reenact subsection 7 of section 57-40.2-01 of the North Dakota Century Code, relating to imposition of use taxes on the gross receipts from sales in this state by a person who engages in regular or systematic solicitation of sales of tangible personal property in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-40.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Retailer maintaining a place of business in this state", or any like term, shall mean any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system for the purpose of effecting retail sales of tangible personal property.

Approved April 21, 1987

Filed April 22, 1987

CHAPTER 716

SENATE BILL NO. 2556
(Heigaard)
(Approved by the Committee on Delayed Bills)

ALCOHOL USE TAX RATE

AN ACT to amend and reenact section 57-40.2-03.2 of the North Dakota Century Code, relating to the rate of use tax on alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.2-03.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-03.2. Use tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of five six percent on the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 717

SENATE BILL NO. 2215
(Committee on Finance and Taxation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE EXCISE TAX DEFINITIONS

AN ACT to create and enact three new subsections to section 57-40.3-01 of the North Dakota Century Code, relating to definitions of vehicles for purposes of the motor vehicle excise tax; and to amend and reenact subsection 1 of section 57-40.3-01 of the North Dakota Century Code, relating to the definition of motor vehicle for purposes of motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 57-40.3-01 of the North Dakota Century Code are hereby created and enacted to read as follows:

"All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of six hundred pounds [272.15 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

"Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.

"Travel trailer" means a mobile home or house trailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.

SECTION 2. AMENDMENT. Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Motor vehicle" ~~shall include~~ includes every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and every trailer, and semitrailer, all-terrain vehicle, snowmobile, and travel trailer for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, but not including housetrailers, or mobile homes.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 718

SENATE BILL NO. 2299
(Senator Nalewaja)
(Representative Skjerven)

MOTOR VEHICLE PURCHASER'S CERTIFICATE

AN ACT to create and enact a new section to chapter 57-40.3 of the North Dakota Century Code, relating to a statement of purchase price and trade-in allowance for motor vehicles which must be furnished by a seller of a motor vehicle; and to amend and reenact section 57-40.3-05 of the North Dakota Century Code, relating to the motor vehicle purchaser's certificate which must be furnished to the motor vehicle registrar in transferring title to a motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.3-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-05. Purchaser to furnish motor vehicle purchaser's certificate to registrar. Any person purchasing a motor vehicle and any person acquiring a motor vehicle by way of gift from a husband or wife, parent or child, or from a brother or sister shall complete a motor vehicle purchaser's certificate in such form and manner as may be prescribed by the registrar, showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, trade-in allowance and description of the trade-in, if any, whether the vehicle was the subject of a gift, and any other information that the registrar may require. If the motor vehicle was the subject of a sale, the purchaser must, upon request of the motor vehicle department, also attach to the motor vehicle purchaser's certificate a copy of the seller's certificate required under section 2 of this Act.

SECTION 2. A new section to chapter 57-40.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Seller to furnish motor vehicle seller's certificate to purchaser. Any person selling a motor vehicle must, upon request of the motor vehicle department, provide a motor vehicle seller's

certificate to the purchaser showing a complete description of the motor vehicle, the seller's name and address, the buyer's name and address, the full purchase price of the vehicle, and the trade-in allowance and description of the trade-in, if any. Every licensed vehicle dealer, at the time of sale of a motor vehicle, must complete that portion of a motor vehicle purchase certificate relating to the full purchase price of the vehicle and any allowance for a trade-in.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 719

HOUSE BILL NO. 1548
(Representatives Graba, Haugen, Haugland)
(Senators Yockim, Wright)

AIRCRAFT EXCISE TAX

AN ACT to amend and reenact sections 57-40.5-01, 57-40.5-02, and 57-40.5-03 of the North Dakota Century Code, relating to the definition of purchase price of aircraft, increasing the rate of tax, and removing the exemption for aircraft upon which aircraft excise tax has once been paid; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.5-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.5-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Aircraft" includes airplanes, helicopters, manned balloons, and ultralight vehicles.
2. "Director" means the director of aeronautics.
3. "Purchase price" means the total amount paid for the aircraft whether paid in money or otherwise, provided, however, that when an aircraft or a motor vehicle that will be subject to the motor vehicle excise tax imposed by chapter 57-40.3, is taken in trade on an aircraft taxable under this chapter, the trade-in value allowed by the person selling the aircraft must be deducted from the selling price to establish the purchase price of the aircraft being sold and the trade-in allowance allowed by the seller on an aircraft accepted as a trade-in constitutes the purchase price of an aircraft. "Purchase price" also means the fair market value when no current purchase is involved and the aircraft is moved by the owner or user from any other state into this state and on

which no sales, use, or excise tax was paid by the owner or user to any other state, or on which a sales, use, or excise tax was paid by the owner or user to another state which does not have reciprocity with this state, and for which aircraft registration is required by section 2-05-11 or registration and licensing required is by section 2-05-18. If tangible personal property that is subject to a sales or a use tax imposed by chapter 57-39-2 or chapter 57-40-2 when sold or used is taken in trade as part payment on an aircraft taxable under this chapter, no credit or trade-in value shall be allowed by the person selling the aircraft in determining the tax imposed by this chapter. The excise tax imposed by this chapter is a one-time tax on the full purchase price with no allowance for personal property trade-in credit, whether the aircraft is purchased or acquired in or outside of the state of North Dakota. After the first taxable sale no additional excise tax shall be imposed upon the sale or transfer of ownership of the aircraft to any purchaser in the state regardless of the number of sales or purchases of the aircraft in the state. The aeronautics commission shall maintain records of all first-time excise taxes paid on all aircraft purchased or acquired for the first time on and after January 1, 1984. If an aircraft is purchased by a person who has paid the one-time excise tax and who has had an aircraft stolen or destroyed, a credit must be allowed in the amount the purchaser has paid in tax on the stolen or destroyed aircraft. The purchaser must provide the director with a notarized statement from the insurance company verifying the fact that the original aircraft was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of registration for the replacement aircraft. In instances in which a licensed aircraft dealer or established fixed base aviation operator located at an airport open for public use and approved by the aeronautics commission, places into service a new or used aircraft for the purpose of renting, leasing, or dealership or fixed base aviation operator utility service, the reasonable value of the new or used replacement aircraft shall be included as a trade-in value if the new or replacement aircraft is properly registered with the aeronautics commission. "Purchase price" in those instances where the aircraft is acquired by gift or other transfer for a nominal or no monetary consideration, also includes the average value of similar aircraft, established by standards as determined by the director. "Purchase price" in those instances where an aircraft is manufactured by a person who registered it under the laws of this state, means the manufactured cost of such aircraft and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual

expenditures for the manufacture of a part or all of the aircraft, manufactured cost means the reasonable value of the completed aircraft, as determined by the director.

4. "Purchaser" means any person owning or in possession of an aircraft who makes application to the director for registration of such aircraft.
5. "Sale", "sells", "selling", "purchase", or "acquired" includes any transfer of title or ownership of an aircraft by way of gift, exchange, barter, or by any other manner for or without consideration.
6. "Use" means the exercise by any person of any right incident to ownership of an aircraft, except that it does not include the sale or holding for sale of such an aircraft in the regular course of business.

SECTION 2. AMENDMENT. Section 57-40.5-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.5-02. Tax imposed. There is imposed an excise tax at the rate of ~~four~~ five percent on the purchase price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered under the laws of this state, except on aircraft or helicopters designed or modified for exclusive use as agricultural aircraft for aerial application of agricultural chemicals, insecticides, fungicides, growth regulators, pesticides, dusts, fertilizer, or other agricultural materials, the excise tax is imposed at the rate of three percent on the purchase price of any such aircraft purchased or acquired in or outside of this state, including the leasing or renting of such agricultural aircraft to users for agricultural purposes.

SECTION 3. AMENDMENT. Section 57-40.5-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.5-03. Exemptions. There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it, the following:

1. Aircraft upon which the excise tax imposed by this chapter has been paid once on the purchase price with no trade-in of aircraft or other property allowed, whether such aircraft is purchased or acquired in or outside of this state, shall be exempt from any additional excise tax upon the sale or transfer of such aircraft to any purchaser in this state regardless of the number of sales or purchasers of such aircraft that may take place within the state. The aeronautics commission shall maintain records of all

~~first-time excise tax paid on all aircraft purchased or acquired for the first time on and after January 1, 1984.~~

- ~~2-~~ 2- Aircraft acquired by disabled veterans as defined by the provisions of Public Law No. 79-663 [38 U.S.C. 1901]. This exemption shall be allowed only with respect to one aircraft owned by any disabled veteran.
- ~~3-~~ 2. Any aircraft owned by or in possession of the federal or state government or any of the political subdivisions, departments, agencies, or institutions thereof.
- ~~4-~~ 3. Aircraft which were previously titled or registered in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer of aircraft by gift, inheritance, or devise between a husband and wife, parent and child, or brothers and sisters; and the transfer of aircraft to reflect a new name of the owner caused by a business reorganization, if the ownership of the business organization remains in the same person or persons as prior to the reorganization.
- ~~5-~~ 4. Aircraft transferred between a lessee and lessor, if the lessee has been in continuous possession of the aircraft for a period of one year or longer, and if the lessor has paid either the tax imposed under this chapter at the time of registering the aircraft in this state or the use tax imposed by chapter 57-40.2.
- ~~6-~~ 5. Aircraft acquired by any parochial or private nonprofit school. To qualify, a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance. The aircraft is not to be used for commercial activities.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on April 1, 1987.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 720

SENATE BILL NO. 2045
(Legislative Council)
(Interim Government Administration Committee)

EMERGENCY SERVICES COMMUNICATION

AN ACT to create an emergency services communication system advisory committee for 911 telephone systems; and to amend and reenact section 57-40.6-05 of the North Dakota Century Code, relating to the use of the emergency services telephone access lines excise tax; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Governor to appoint an emergency services communication system advisory committee - Standards and guidelines - Report.

1. The governor shall appoint a nine-member emergency services communication system advisory committee for 911 telephone systems. For purposes of this section, "emergency services communication system" has the same meaning as that term is defined in section 57-40.6-01. The governor shall include, on the advisory committee, one representative from the rural telephone companies, one representative from the commercial telephone companies, one representative from the North Dakota league of cities, one representative from the association of counties, one representative from the office of management and budget, one representative from the North Dakota peace officers association, one representative from the fire chiefs association, one representative from the department of human services, and one representative from the state radio communications' office. Members' terms shall be for three years and subject to reappointment. The committee shall name a chairman and a vice chairman from its membership, and the state radio communications office shall provide staff services to the advisory committee. Advisory committee members are entitled to travel expense reimbursement from the state radio communications office. Reimbursement shall be at the same rates and in the same manner as provided for state employees.

2. The advisory committee with the assistance of the state radio communications office shall establish standards and guidelines for the development and operation of emergency 911 telephone systems that utilize a county rural numbering system to identify the sections, townships, and quarters, and the farms, residences, businesses, or buildings in a counterclockwise rotation around each quarter. The standards and guidelines are to establish the level of emergency 911 telephone system services to be provided and the uniformity and compatibility of emergency 911 telephone systems in the state. The standards must require that systems installed after July 1, 1987, must identify the emergency caller's location.
3. The advisory committee shall prepare, each biennium, a report on its work for submission to the governor and the legislative assembly.

SECTION 2. AMENDMENT. Section 57-40.6-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.6-05. Restriction on use of tax proceeds. The county or city may not use the proceeds of the tax imposed under section 57-40.6-02 for any purpose other than establishing or operating the emergency services communication system in accordance with the standards and guidelines established by the emergency services communication advisory committee.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 721

HOUSE BILL NO. 1481
(Dorso)

IMPORTER FOR USE TAX ADMINISTRATION

AN ACT to amend and reenact subsection 3 of section 57-43.1-01, sections 57-43.1-35, 57-43.1-42, 57-43.1-43, subsection 5 of section 57-43.2-01, and sections 57-43.2-28, 57-43.2-35, and 57-43.2-36 of the North Dakota Century Code, relating to the definition of importer for use, importer for use tax credits, reports, and payments for motor vehicle fuels and special fuels taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-43.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and having two axles and a weight exceeding twenty-six thousand pounds [1179.3401 kilograms] or having three or more axles regardless of weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.

SECTION 2. AMENDMENT. Section 57-43.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-35. Exemptions. The tax levied under section 57-43.1-33 does not apply to fuel imported into and used in this state in:

1. Operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation.
2. Operating a motor vehicle having a motor fuel supply tank or tanks with an aggregate capacity of not more than thirty-five gallons (132.48 liters) if such vehicle is not being used as a common or contract carrier of persons or property or as a private commercial carrier of property.
3. Operating vehicles of the government of the United States or any of its agencies, any state, or any political subdivision of any state, provided no exemption of the tax levied by section 57-43.1-33 may be construed as an exemption from any other tax levied by law.

SECTION 3. AMENDMENT. Section 57-43.1-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-42. Credit for North Dakota purchases - Refunds. If the ~~credit for~~ tax paid on fuel purchased or acquired by the importer for use from sources within this state for the propulsion of motor vehicles exceeds the tax which ~~would apply~~ applies to fuel used for the propulsion of motor vehicles on the public highways of this state, the excess ~~credit must tax paid on the fuel~~ may be refunded, or ~~credit applied for the amount against any subsequent tax return~~ the amount may be carried over as a credit against a subsequent tax liability. The importer for use may carry the credit on subsequent tax reports for a period not to exceed eight consecutive calendar quarters.

SECTION 4. AMENDMENT. Section 57-43.1-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-43. Importer for use tax ~~administration, reports, payments, records, refunds, penalties, disposition of funds, audits, and assessments.~~

1. ~~Importer~~ Importers for use tax ~~must be reported, paid, collected, refunded, and administered and importers for use are subject to the same penal provisions, and shall file a quarterly tax return with the commissioner on forms prescribed by the commissioner to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to record keeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.~~

2. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.1-17.

SECTION 5. AMENDMENT. Subsection 5 of section 57-43.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and having two axles and a weight exceeding twenty-six thousand pounds [1179.3401 kilograms] or having three or more axles regardless of weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.

SECTION 6. AMENDMENT. Section 57-43.2-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-28. Exemptions. The tax levied under section 57-43.2-26 does not apply to fuel imported into and used in this state in:

1. Operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation.
2. Operating a motor vehicle having a motor fuel supply tank or tanks with an aggregate capacity of not more than thirty-five gallons {132.48 liters} if such vehicle is not being used as a common or contract carrier of persons or property or as a private commercial carrier of property.
3. Operating vehicles of the government of the United States or any of its agencies, any state, or any political subdivision of any state provided no exemption of the tax levied by section 57-43.2-26 may be construed as an exemption from any other tax levied by law.

SECTION 7. AMENDMENT. Section 57-43.2-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-35. Credit for North Dakota purchases - Refunds. If the ~~credit for~~ tax paid on fuel purchased or acquired by the importer for use from sources within this state for the propulsion of motor

vehicles exceeds the tax which would apply applies to fuel used for the propulsion of motor vehicles on the public highways of this state, the excess credit must tax paid on the fuel may be refunded, or credit applied for the amount against any subsequent tax return the amount may be carried over as a credit against a subsequent tax liability. The importer for use may carry the credit on subsequent tax reports for a period not to exceed eight consecutive calendar quarters.

SECTION 8. AMENDMENT. Section 57-43.2-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-36. Importer for use tax administration reports, payments, records, refunds, penalties, disposition of funds, audits, and assessments.

1. ~~Importer~~ Importers for use tax must be reported, paid, collected, refunded, and administered and ~~importers for use~~ are subject to the same penal provisions, and shall file a quarterly tax return with the commissioner on forms prescribed by the commissioner to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to record keeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.
2. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 722

HOUSE BILL NO. 1290
(A. Hausauer)

COMPRESSED NATURAL GAS SALES

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of "special fuel wholesaler"; and to amend and reenact subsection 2 of section 23-13-01, subsections 3 and 4 of section 23-13-02.1, sections 57-43.2-05, 57-43.2-06, 57-43.2-07, 57-43.2-08, 57-43.2-09, 57-43.2-10, 57-43.2-11, 57-43.2-22, 57-43.2-23, and 57-43.2-24 of the North Dakota Century Code, relating to the definitions of "filling stations," "self-service motor fuel dispensing facility," and "self-service motor fuel dispensing unit" and administration and imposition of special fuels taxes regarding compressed natural gas and special fuel wholesalers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Filling station" shall mean all places of whatever character or description where gasoline ~~or~~, other inflammable liquids, or compressed natural gas are sold at retail for use in motor vehicles.

SECTION 2. AMENDMENT. Subsections 3 and 4 of section 23-13-02.1 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. "Self-service motor fuel dispensing facility" means any business establishment which offers for sale at retail prices motor fuels or compressed natural gas which are dispensed from self-service motor fuel or compressed natural gas dispensing units.
4. "Self-service motor fuel dispensing unit" means any system, device, or pump for dispensing motor fuels or compressed natural gas into the fuel tanks of motor

vehicles which is intended to be operated by the purchaser of such motor fuel or compressed natural gas, except that such term does not include any system, device, or pump which is coin-operated or currency-operated.

SECTION 3. A new subsection to section 57-43.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.

SECTION 4. AMENDMENT. Section 57-43.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-05. Special fuel wholesaler's or dealer's license required. No person may act as a special fuel wholesaler or dealer in this state unless that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by the commissioner. Application for a special fuel wholesaler's or dealer's license shall be made to the commissioner and a separate license is required for each separate place of business or location where special fuels are regularly sold, delivered, or placed into the tanks of bulk supply vehicles for delivery into supply tanks of special fuel users. The application must be filed upon a form prepared and furnished by the commissioner and shall contain such information as the commissioner requires.

SECTION 5. AMENDMENT. Section 57-43.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-06. License, fee, and bond. No person may act as a special fuel wholesaler or dealer in this state unless the person complies with the provisions of sections 57-43.2-05, 57-43.2-07, 57-43.2-08, and 57-43.2-09.

SECTION 6. AMENDMENT. Section 57-43.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-07. Special fuel wholesaler's or dealer's bond.

1. Except as provided in this section, no special fuel wholesaler's or dealer's license shall be issued to any person or continued in force unless the person has furnished a surety bond in the form and amount as the commissioner requires, but not less than five hundred dollars, to secure his compliance with this chapter and

the payment of all taxes, interest, and penalties due or to become due.

2. The commissioner may waive the filing of a bond if, upon investigation, it is found that the bond may be waived without impairing or jeopardizing the revenue collections of this state, or in lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, by the person depositing moneys with the tax commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person.

SECTION 7. AMENDMENT. Section 57-43.2-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-08. Issuance of licenses - Fees. Upon receipt of the application and bond in proper form and upon the payment by the applicant of a special fuel wholesaler's or dealer's license fee of ten dollars, the commissioner shall issue to the applicant a license to act as a special fuel wholesaler or dealer. The commissioner may refuse to issue a special fuel wholesaler's or dealer's license to any person who formerly held such a license but which was revoked prior to the time of filing the application, or who is a subterfuge for the real party of interest whose license prior to the time of filing of the application has been revoked, or upon other sufficient cause being shown. Before such refusal the commissioner shall grant the applicant a hearing and give the applicant at least ten days' written notice of the time and place of hearing. Each special fuel wholesaler's or dealer's license is valid until suspended or revoked for cause or otherwise canceled. No special fuel wholesaler's or dealer's license is transferable.

SECTION 8. AMENDMENT. Section 57-43.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-09. Revocation, cancellation, and surrender of license and bond. The commissioner may revoke the license of any special fuel wholesaler or dealer for reasonable cause. Before revoking any license the commissioner shall notify the licensee to show cause within fifteen days of the date of the notice why such license should not be revoked. Any time prior to and pending hearing the commissioner may, in the exercise of reasonable discretion, suspend the license. The commissioner shall cancel any license to act as a special fuel wholesaler or dealer immediately upon the surrender of the license by the holder.

SECTION 9. AMENDMENT. Section 57-43.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-10. Special fuel wholesaler's or dealer's records. For each location where special fuel is sold or delivered to any special fuel dealer or user the special fuel wholesaler or dealer making the sale or delivery shall prepare and maintain such records as the commissioner may reasonably require with respect to all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other dispositions of special fuel. The records required under this section must be retained for a minimum period of three years and must be available at all reasonable times for examination by the commissioner.

SECTION 10. AMENDMENT. Section 57-43.2-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-11. Records and returns - Penalties and interest - Powers of commissioner.

1. A special fuel dealer shall keep such records and make such monthly returns and payments of the tax to the commissioner, in the manner, at the time, and pursuant to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The commissioner may require returns and payments of the tax to be made for other than monthly periods.
2. For failure or refusal to keep such records, file returns and make payments of the tax to the commissioner as provided in this chapter, a special fuel dealer is subject to the penalties and interest as provided in this chapter.
3. The commissioner, for good cause shown, may waive the penalty for failure or refusal to file a return within the time required by this chapter or grant a reasonable extension of time for filing such a return. The

commissioner may revoke the license of any special fuel dealer under the conditions and after notice as provided in section 57-43.2-09; assess deficiencies in the tax; determine the tax when returns are not filed as required by this chapter; and permit credit for or authorize refund of erroneously or illegally collected taxes, penalties, or interest imposed by this chapter from undistributed funds received under this chapter, all in the manner and to the same extent as provided in sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20.

4. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter, and may examine the records of special fuel wholesalers or dealers and special fuel users and make such investigations as are deemed necessary in the administration and enforcement of this chapter.
5. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

SECTION 11. AMENDMENT. Section 57-43.2-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-22. Rules - Administration. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter for special fuel wholesalers or dealers and special fuel users. The commissioner may audit and examine the records of special fuel wholesalers or dealers and special fuel users and make other investigations as the commissioner deems necessary in the administration and enforcement of this chapter. If upon audit, examination, or investigation the commissioner finds additional taxes are due, the commissioner may assess the additional taxes, and the penalty and interest must be added as provided in section 57-43.2-15.

SECTION 12. AMENDMENT. Section 57-43.2-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-23. Violations. No person may:

1. Refuse or knowingly or intentionally fail to make and file any statement required by this chapter in the manner or within the time required.
2. Knowingly, or with intent to evade or aid in the evasion of the tax imposed by this chapter, make any false statement or conceal any material fact in any record, return, or affidavit provided for in this chapter.

3. Conduct any activities requiring a license under this chapter without the license or after the license has been surrendered, canceled, or revoked.
4. Assign or attempt to assign a license to act as a special fuel wholesaler or dealer.
5. Receive special fuel in this state into the tanks of a motor vehicle or into supply tanks for eventual use in a motor vehicle upon the highways of this state from a person not holding a valid license as a special fuel dealer.
6. Fail to keep and maintain books, records, or metering devices that are required by this chapter.

SECTION 13. AMENDMENT. Section 57-43.2-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-24. Penalties. Any person violating any provision of this chapter is guilty of a class B misdemeanor. The commissioner shall revoke for a period of not less than one year the special fuel wholesaler's or dealer's license of any special fuel wholesaler or dealer convicted of violating this chapter.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 723

HOUSE BILL NO. 1193
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

GROSS PRODUCTION TAX APPORTIONMENT

AN ACT to amend and reenact section 57-51-15 of the North Dakota Century Code, relating to apportionment of proceeds from the oil and gas gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-15. Apportionment and use of proceeds of tax. The gross production tax provided for in this chapter shall be apportioned as follows:

1. First an amount equal to one percent of the gross value at the well of the oil and gas upon which a tax is collected under this chapter shall be deposited with the state treasurer, who shall distribute credit the revenues in the following manner:
 - a. For taxes received between July 1, 1981, and June 30, 1983:
 - (1) The treasurer shall first distribute an amount which, when added to that distributed to townships from nonrefunded motor vehicle fuel and special fuel taxes under section 57-43-1-03, will result in a total distribution to townships under these two sections of eight million dollars for the 1981-83 biennium. The same distribution formula shall be used for moneys allocated to townships under this section as under 57-43-1-03,
 - (2) The treasurer shall next distribute an amount which, when added to the sum distributed under paragraph 1, does not exceed thirty-two million dollars for the 1981-83 biennium, to the highway

tax distribution fund established under section 54-27-19, and

- (3) The treasurer shall finally distribute any amount over thirty-two million dollars generated by this subsection for the 1981-83 biennium to the state general fund.
- b. For any taxes received after June 30, 1983, all revenues shall be credited to the state general fund.
2. The first one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county shall be allocated seventy-five percent to that county and twenty-five percent to the state general fund. The second one million dollars of annual revenue after the deduction of the amount provided for in subsection 1 from oil or gas produced in any county shall be allocated fifty percent to that county and fifty percent to the state general fund. All annual revenue after the deduction of the amount provided for in subsection 1 above two million dollars from oil or gas produced in any county shall be allocated twenty-five percent to that county and seventy-five percent to the state general fund. However, the amount to which each county shall be entitled pursuant to this subsection shall be limited based upon the population of the county according to the last official decennial federal census as follows:
- a. Counties having a population of three thousand or less shall receive no more than three million nine hundred thousand dollars for each fiscal year.
 - b. Counties having a population of over three thousand but less than six thousand shall receive no more than four million one hundred thousand dollars for each fiscal year.
 - c. Counties having a population of six thousand or more shall receive no more than four million six hundred thousand dollars for each fiscal year.
- Any allocations for any county pursuant to this subsection which exceed the applicable limitation for that county as provided in subdivisions a through c shall be deposited instead in the state's general fund.
3. Forty-five percent of all revenues as may be by the legislative assembly be allocated to any county hereunder shall be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county shall be apportioned by the county treasurer quarterly to school districts within the county

on the average daily attendance distribution basis, as certified to him by the county superintendent of schools. However, no school district shall receive in any single academic year an amount under this subsection greater than the county average per-pupil cost multiplied by seventy percent, then multiplied by the number of pupils in average daily attendance or the number of children of school age in the school census for the county whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county shall be entitled to one hundred twenty percent of the county average per-pupil cost multiplied by number of pupils in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share shall be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder shall be paid quarterly by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city shall receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation shall be deposited instead in the county general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining the per capita limitation in this section shall be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city shall be included by adding the months all such employees were employed during the prior year and dividing by twelve.

- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city shall be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually shall be included by taking the smaller of either of the following:
- (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 724

SENATE BILL NO. 2079
(Legislative Council)
(Interim Taxation Committee)

OIL EXTRACTION TAXES AND EXEMPTIONS

AN ACT to amend and reenact subsections 4 and 5 of section 38-08-04, and sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to the duties of the industrial commission, the definitions of stripper well property, qualifying secondary recovery project, and qualifying tertiary recovery project for oil extraction purposes, the definition of average price, the rate of the oil extraction tax, and exemption from the oil extraction tax; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 38-08-04 of the 1985 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, ~~and~~ to classify and determine the status and depth of wells that are stripper well property as defined in subsection 5 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 2 of this Act, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.
5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and of subsections ~~1 and, 4, 5, 6, and 8~~ 1 and, 4, 5, 6, and 8 of section 57-51.1-01.

SECTION 2. AMENDMENT. Section 57-51.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-01. Definitions for oil extraction tax. For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Average price" of a barrel of crude oil means the average daily price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the wall street journal, midwest edition, for the period June first through October thirty-first of any year.
3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
- 3- 4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the ~~appropriate governmental regulatory authority~~ industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission, the project must have been unitized after the effective date of this Act, and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.
6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
 - a. Miscible fluid displacement.

- b. Steam drive injection.
- c. Microemulsion.
- d. In situ combustion.
- e. Polymer augmented water flooding.
- f. Cyclic steam injection.
- g. Alkaline flooding.
- h. Carbonated water flooding.
- i. Immiscible carbon dioxide displacement.
- j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.

- 4- 7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
- 5- 8. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet or less, fifteen barrels per day for wells of a depth of more than six thousand feet but not more than ten thousand feet, and twenty barrels per day for wells of a depth of more than ten thousand feet during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

SECTION 3. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for wells drilled and completed after the effective date of this Act, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more then the rate of tax for the following calendar year on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted.

*** SECTION 4. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. The activity not otherwise exempt of extracting from the earth the oil that is owned by a royalty owner or royalty owners in the first one hundred barrels, or any lesser amount, of the average daily production of oil that is produced during each calendar day from any well. For a well drilled and completed after the effective date of this Act, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state, except the portion of the amendment to

*** NOTE:** Section 57-51.1-03 was also amended by section 1 of Senate Bill No. 2078, chapter 725. subsection 3 of section 57-51.1-03 relating to removal of the oil extraction tax exemption for oil owned by a royalty owner becomes effective July 1, 1987.

Approved April 24, 1987
Filed April 27, 1987

CHAPTER 725

SENATE BILL NO. 2078
(Legislative Council)
(Interim Taxation Committee)

ROYALTY OWNERS' EXTRACTION TAX EXEMPTION

AN ACT to amend and reenact section 57-51.1-03 of the North Dakota Century Code, relating to removal of the royalty owners' exemption from the oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
- 3- The activity not otherwise exempt of extracting from the earth the oil that is owned by a royalty owner or royalty owners in the first one hundred barrels, or any lesser amount, of the average daily production of oil that is produced during each calendar day from any well-

Approved April 7, 1987
Filed April 9, 1987

* NOTE: Section 57-51.1-03 was also amended by section 4 of Senate Bill No. 2079, chapter 724.

CHAPTER 726

HOUSE BILL NO. 1313
(Anderson)

MOBILE HOME TAX DELINQUENCY AND REFUNDS

AN ACT to amend and reenact sections 57-55-03 and 57-55-04.1 of the North Dakota Century Code, relating to delinquent mobile home taxes, and the time for filing claims for refund of mobile home taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-55-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-03. When taxes become due and delinquent - Penalty.

1. a. The tax imposed in this chapter ~~shall become~~ is due and payable on January tenth of each year or ten days after ~~such~~ the mobile home is purchased or first moved into this state. If the tax due for the entire year is paid in full by February fifteenth, the county treasurer shall allow a five percent discount.
- b. If a mobile home is purchased or moved into this state after January tenth and if the tax imposed by this chapter is paid in full within ten days after the mobile home is purchased or moved into this state, the county treasurer shall allow a five percent discount. However, if the tax is not paid within forty days it is subject to a penalty and interest. The penalty is one percent of the tax. The interest is one-half percent of the tax for each full and fractional month of delay.
2. The Except as provided in subdivision b of subsection 1, the tax imposed by this chapter may be paid in two equal installments if the amount of the tax due is forty dollars or more. The first installment is due on January tenth and becomes delinquent on March first and is then subject to a penalty of two percent, and on April first an

additional penalty of two percent, and on May first an additional penalty of two percent, and on June first an additional penalty of two percent. The second installment is due June first and is delinquent on July first and is then subject to a penalty of two percent, and on August first an additional penalty of two percent, and on September first an additional penalty of two percent, and on October first an additional penalty of two percent. If any tax remains due after January first of the next year, interest is due at the monthly rate of one-half percent of the tax due for each month or fraction of a month until the tax and penalties have been paid in full.

SECTION 2. AMENDMENT. Section 57-55-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-04.1. Procedure for abatement, refund, or compromise of tax. Any person having any estate, right, title, or interest in or lien upon any mobile home which has been assessed for taxation purposes pursuant to this chapter may apply for abatement, refund, or compromise, as the case may be, pursuant to chapter 57-23. The application shall be made in writing on the form prescribed by the tax commissioner and shall be filed in triplicate with the county auditor of the county where the mobile home was assessed ~~within six months after the tax imposed by this chapter becomes due, or at any time during the taxable year that a mobile home qualifies under the provisions of section 57-55-10.~~ The county auditor shall promptly serve the county director of tax equalization with one copy of the application. The abatement or compromise shall be granted by the county commissioners if the facts upon which the application is based establish that the assessment contains error, or that the value placed upon the mobile home by the county director of tax equalization was excessive, or that the mobile home is exempt from taxation pursuant to section 57-55-10. The decision of the county commissioners may be appealed in the manner provided by law.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 727

HOUSE BILL NO. 1568
(Knell, Gunsch)

MOBILE HOME MOVING PERMITS

AN ACT to amend and reenact subsection 2 of section 57-55-11 of the North Dakota Century Code, relating to mobile home moving permits; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-55-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Before a mobile home is moved from its existing location, the owner must have a current year's mobile home a moving permit or a tax release statement must be obtained by the owner from the county director of tax equalization indicating that all taxes, penalties, and interest levied against the mobile home have been paid. While the mobile home is being transported, a the moving permit must be displayed on the rear of the mobile home or the owner must provide the mover with a current tax release statement. A violation of. Any person who violates this provision shall constitute is guilty of an infraction, but the minimum penalty shall be one for which a fine of no less than one hundred dollars and no more than five hundred dollars may be imposed.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 728

HOUSE BILL NO. 1274
(Kloubec, Knell, Goetz, Gunsch)

COAL GASIFICATION BYPRODUCTS TAX

AN ACT to amend and reenact sections 57-60-01 and 57-60-03 of the North Dakota Century Code, relating to definitions for purposes of the privilege tax on coal facilities, to exempt byproducts of the coal gasification process from the gross receipts tax on coal conversion facilities, and relating to annual reporting by the operator of a coal gasification plant of the quantity of byproducts produced; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-60-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-01. Definitions. As used in this chapter:

1. "Byproducts" means commercially usable products produced during the coal gasification process other than the principal product of a coal gasification plant.
2. "Coal conversion facility" means either:
 - a. A plant, other than an electrical generating plant, together with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including but not limited to coal gasification, coal liquefaction, and the manufacture of fertilizer and other products, and which uses or is designed to use over five hundred thousand tons [453,592.37 metric tons] of coal per year; or
 - b. An electrical generating plant, together with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation

unit with a capacity of one hundred twenty thousand kilowatts or more.

- 2- 3. "Coal gasification" means the production of methane or other commercial gas products synthetic natural gas, methanol, or other principal commercial gaseous or liquid product from coal.
- 3- 4. "Commissioner" means the state tax commissioner.
- 4- 5. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by a coal conversion facility subject to the provisions of this chapter from the production of products of a coal conversion facility, but not including any revenue derived from transportation, transmission, distribution, or other ~~items~~ events which occur after completion of the process of production of the products of such the facility is completed. For the purpose of computing the tax imposed by this chapter, "gross receipts" does not include any financial assistance, whether in the form of price guarantee payments or otherwise, provided by the federal government or any agency of the federal government nor does it include any revenue derived from the sale of byproducts as herein defined to a maximum of twenty percent of the gross receipts as defined in this subsection.
- 5- 6. "Operator" means any person owning, holding, or leasing a coal conversion facility and conducting the conversion of coal into the products of ~~such facilities~~ the facility.
- 6- 7. "Person" means any individual, estate, trust, corporation, cooperative corporation, or association.
- 7- 8. "Synthetic natural gas" means methane and any admixed gaseous products produced by coal gasification.

SECTION 2. AMENDMENT. Section 57-60-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-03. Measurement and recording of synthetic natural gas, byproducts, or electricity produced. The production of synthetic natural gas, byproducts, or electrical power shall be measured at the place of production or generation, and any person subject to the imposition of the taxes provided by this chapter shall maintain devices to measure and record the cumulative periodic totals of synthetic natural gas, byproducts, and electrical power generated. Any person subject to the taxes imposed by this chapter shall maintain accurate records of the daily and monthly totals of synthetic natural gas and electrical power generated and subject to such taxes. On or before October first of each year the operator of any coal gasification plant shall file a report with the state health officer listing the quantity of byproducts produced during the year ending June thirtieth of that year. The commissioner shall have access to such records at reasonable times and places.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1987.

CHAPTER 729

HOUSE BILL NO. 1065
(Legislative Council)
(Interim Taxation Committee)

COAL SEVERANCE AND CONVERSION TAXES

AN ACT to create and enact a new subsection to section 57-60-01 and a new section to chapter 57-61 of the North Dakota Century Code, relating to definition of the term installed capacity for coal conversion facilities privilege tax purposes, a reduction in the rate of the coal severance tax for coal mined for use in coal conversion facilities, and a separate and additional coal severance tax and allocation of revenue from the tax; to amend and reenact subsection 2 of section 57-60-02, sections 57-61-01, 57-61-10, and 57-62-02 of the North Dakota Century Code, relating to the rate of the coal conversion facilities privilege tax and coal severance tax and the allocation of moneys in the coal development fund; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-60-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Installed capacity" means the number of kilowatts a power unit can produce according to the nameplate assigned to the power unit generator by the manufacturer.

* SECTION 2. AMENDMENT. Subsection 2 of section 57-60-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill ~~on each kilowatt hour of electricity produced for the purpose of sale~~ times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit

* NOTE: Section 57-60-02 was also amended by section 1 of Senate Bill No. 2099, chapter 730.

bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

SECTION 3. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-01. Severance tax upon coal - Imposition - Computation of increases-- In lieu of sales and use taxes - Payment to the tax commissioner. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax in an amount to be determined as follows:

- 1- Eighty-five cents per ton of two thousand pounds [907.18 kilograms]; and
- 2- For every four point increase in the index of wholesale prices for all commodities prepared by the United States department of labor, bureau of labor statistics, the amount of the severance tax provided in subsection 1 shall be increased one cent per ton of two thousand pounds [907.18 kilograms]. For the purposes of this computation, a fractional point increase shall be disregarded if less than one-half point and treated as one full point if one-half point or more. The state tax commissioner shall determine such increases based upon increases in the wholesale price index from the level of such index as of June 1979 to the level of such index as of December 1979 and of May and November of each year thereafter, and any increases based upon the level of the index in May shall be effective on and after the following July first and any increases based upon the level of the index in November shall be effective on and after the following January first. At no time shall the amount of the severance tax be reduced. If the wholesale price index declines, the severance tax shall remain at the highest level determined prior to such decline, and shall remain at such level until further increases are warranted because of further increases in the wholesale price index beyond the point at which the last increase was determined of seventy-five cents per ton of two thousand pounds [907.18 kilograms].

Such severance tax shall be in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each month within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner shall deem necessary. If the method of determining increases in the amount of the severance tax provided in subsection 2 is for any reason held to be invalid, such decision shall not affect the validity of the amount of the tax provided in subsection 1.

SECTION 4. A new section to chapter 57-61 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional coal severance tax - Lignite research contracts. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, which is hereby created, to be known as the lignite research fund. Moneys in the lignite research fund shall be available to the industrial commission for contracts with research facilities within this state. Such moneys must be used for contracts for land reclamation research projects and for lignite development research and hydroelectricity impact studies. The industrial commission shall adopt rules for submission and consideration of research proposals and entering into contracts under this section.

SECTION 5. AMENDMENT. Section 57-61-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-10. Coal development fund established. Moneys collected by the state tax commissioner pursuant to the provisions of sections 57-61-01 through 57-61-09 shall be paid to the state treasurer within fifteen days from the date they are received by the state tax commissioner and shall be credited to a special fund in the state treasury, to be known as the coal development fund. The moneys accumulated in such fund shall be allocated by the state treasurer as provided by law and as appropriated by the legislative assembly and such allocation shall occur within fifteen days from the date the moneys are received by the state treasurer from the state tax commissioner.

SECTION 6. AMENDMENT. Section 57-62-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-02. Allocation of moneys in coal development fund. Moneys deposited in the coal development fund shall be apportioned quarterly monthly by the state treasurer as follows:

1. Thirty-five percent shall be credited to a special fund in the state treasury for distribution through grants by the energy development impact office to coal impacted cities, counties, school districts, and other taxing districts, subject to appropriation by the legislative assembly.
- 2- Fifteen percent shall be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to

section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 16, chapter 626, 1979 Session Laws shall also be deposited in the trust fund created pursuant to this subsection. The fund shall be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands shall have full authority to may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust shall be used first to replace uncollectible loans made from the fund and the balance shall be deposited in the state's general fund. Loan principal payments shall be redeposited in the trust fund. Such trust fund shall be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.

- 3- 2. Twenty Thirty-five percent shall be allocated to the coal-producing counties and shall be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such ~~quarterly~~ monthly period. Allocations under subdivision a shall be apportioned by the county treasurer within fifteen days from the date the moneys are received from the state treasurer and allocations under subdivision b shall be apportioned by the state treasurer as follows:
- a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision shall be allocated as follows:
 - (1) Thirty percent shall be paid by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be deposited by the county treasurer in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent shall be apportioned by the county treasurer to school districts within the county on the average daily membership basis, as

certified to ~~him~~ the county treasurer by the county superintendent of schools.

- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned from that coal mining operation according to this subsection shall be allocated, subject to the definitions of terms and the requirements in paragraph 4, as follows:
- (1) Thirty percent shall be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion shall be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. ~~It shall be the duty of the~~ The county director of tax equalization of the coal-producing county ~~to~~ shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
 - (3) Thirty percent shall be apportioned by the state treasurer to school districts within the

coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

(4) For the purposes of this subdivision:

- (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produces produced more than one hundred fifty thousand tons [136,077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
- (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136,077.71 metric tons] of coal are were mined in the prior quarterly period.
- (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68,038.86 metric tons] of coal are were mined in the prior quarterly period.
- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68,038.86 metric tons] of

coal ~~are~~ were mined in the prior quarterly period.

- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a ~~quarterly~~ monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same ~~quarterly~~ monthly period.

4- 3. Thirty Fifty percent shall be deposited in the state's general fund.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the lignite research fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much thereof as may be necessary, to the industrial commission for the purposes of entering contracts for land reclamation research, lignite development research, and hydroelectricity impact studies under section 4 of this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 8. APPROPRIATION. There is hereby appropriated the sum of \$1,050,000 out of any moneys in the coal development impact fund, not otherwise appropriated, to the energy development impact office of the state of North Dakota, for the purpose of making coal development impact grants, for the biennium beginning July 1, 1987, and ending June 30, 1989. If the unobligated balance on September 1, 1987, exceeds the appropriation contained in this section, the state emergency commission may authorize the expenditure of those amounts at the request of the board of university and school lands.

SECTION 9. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 24, 1987
Filed April 30, 1987

CHAPTER 730

SENATE BILL NO. 2099
(Maixner)

COAL GASIFICATION TAXES

AN ACT to amend and reenact section 57-60-02 of the North Dakota Century Code, relating to the rate of the coal conversion facility privilege tax imposed on coal gasification plants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-60-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax shall be computed as follows:

1. For all coal conversion facilities, ~~other than electrical generating plants and coal gasification plants as provided in subsections 2, 3, and 4 except as otherwise provided in this section,~~ the tax shall be measured by the gross receipts derived from such facility for the preceding month and shall be in the amount of two and one-half percent of such gross receipts. For purposes of this subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.
2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there shall be a tax at the rate

* NOTE: Section 57-60-02 was also amended by section 2 of House Bill No. 1065, chapter 729.

of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale.

4. For coal gasification plants ~~constructed prior to July 1, 1985,~~ the tax shall be the greater of either the amount provided in subsection 1 or ~~fifteen~~ seven cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.
5. For coal gasification plants ~~constructed after July 1, 1985,~~ the tax shall be either the amount provided in subsection 1 or ten cents on each one thousand cubic feet [28,316.85 liters] of synthetic natural gas produced for the purpose of sale, whichever is greater.
- 6- a. For all coal conversion facilities, other than electrical generating plants, ~~which commence construction after July 1, 1985,~~ the production from the facilities shall be exempt from sixty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from the effective date of this Act, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
- b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining thirty-five percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection shall be allocated entirely to the county for allocation as provided in section 57-60-15.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 731

SENATE BILL NO. 2436
(Keller)

COAL CONVERSION TAX ALLOCATIONS

AN ACT to amend and reenact section 57-60-14 of the North Dakota Century Code, relating to the time for distribution of the privilege tax on coal facilities by the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-14. Allocation of revenue. The state treasurer, ~~on or before July fifteenth of each year,~~ shall quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, thirty-five percent to the county and sixty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02, which shall be deposited in the state general fund.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 732

HOUSE BILL NO. 1601
(Haugen, Anderson)

OIL AND GAS IMPACT LOANS

AN ACT to amend and reenact subsection 2 of section 57-62-02 and section 57-62-03 of the North Dakota Century Code, relating to loans to oil and gas development impacted counties, cities, and school districts through the coal development trust fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-62-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Fifteen percent shall be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 16, chapter 626, 1979 Session Laws shall also be deposited in the trust fund created pursuant to this subsection. The fund shall be held in trust and administered by the board of university and school lands for loans to coal and oil and gas development impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands shall have full authority to invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust shall be used first to replace uncollectible loans made from the fund and the balance shall be deposited in the state's general fund. Loan principal payments shall be redeposited in the trust fund. Such trust fund shall be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.

SECTION 2. AMENDMENT. Section 57-62-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-03. Loans - Terms and conditions - Repayment. The board of university and school lands is authorized to make loans to coal and oil and gas development impacted counties, cities, and school districts before or after the beginning of actual coal mining from moneys deposited in the coal development trust fund established by subsection 2 of section 57-62-02. The amount which is available for loans to oil and gas development impacted counties, cities, and school districts may not exceed five million dollars from the coal development trust fund during the 1987-89 biennium. Loans made prior to actual mining must be preceded by site permitting and by beginning actual construction of the mine or its mine mouth facility. Loans may be made for any purpose for which a grant may be made pursuant to this chapter, but before making any loan the board of university and school lands shall receive the recommendation of the energy development impact office. The board of university and school lands shall prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants shall bear interest at a rate not to exceed six percent. The warrants executed as evidence of loans to mitigate coal development impact shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor shall such loans be considered as indebtedness of the county, city, or school district. Warrants executed as evidence of loans to mitigate oil and gas development impact are payable from any funds of the borrowing political subdivision and constitute a general obligation and indebtedness of the political subdivision. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of ~~the~~ a loan to mitigate coal development impact shall provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter shall be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The terms of the loan to mitigate oil and gas development impact shall provide for repayment of the loan from any moneys available to the political subdivision. The amount withheld by the state treasurer as which constitutes payment of interest shall be deposited in the general fund and the amount withheld by the state treasurer as which constitutes payment of principal shall be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal shall be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys under this chapter to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district shall be obligated to repay the loan from such allocation. A loan made to mitigate oil and gas development impact shall not be canceled for any reason. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 10, 1987
Filed April 14, 1987

TOWNSHIPS

CHAPTER 733

SENATE BILL NO. 2514
(Senator Vosper)
(Representatives A. Olson, Myrdal)

TOWNSHIP FISCAL YEAR

AN ACT to create and enact a new subsection to section 58-06-01 of the North Dakota Century Code, relating to township budgets; and to amend and reenact subsection 9 of section 58-06-01 and sections 58-08-05 and 58-11-03 of the North Dakota Century Code, relating to township budgets, annual statements by township treasurers, and the duties of boards of auditors of townships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 58-06-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. To levy the annual taxes for the ensuing calendar year as voted at the annual township meeting.

SECTION 2. A new subsection to 58-06-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To prepare a budget for the township at its annual meeting. In March 1988 the board shall budget for the remainder of the calendar year 1988 and for the entire calendar year 1989. At each annual meeting thereafter the board shall budget for the following calendar year.

SECTION 3. AMENDMENT. Section 58-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-08-05. Treasurer to make annual statement - Contents - Where filed. ~~Within five days preceding the annual township meeting, each The township treasurer shall prepare a written an annual statement of the moneys received from the county treasurer and other officers and persons and of all moneys paid out by him as treasurer. He shall set forth particularly from whom and on what account he received the moneys, with the amount received from each officer or person and the~~

date of receiving the same, and to whom and for what purpose he paid out any moneys, with the amount and date of each payment. He shall state the amount of moneys remaining in his hands as treasurer. He shall file the statement receipts and disbursements for the period January first to December thirty-first of each year. The statement must include the amount, date, source, and fund credited for each receipt and the amount, date, payee, purpose, and fund debited for each disbursement. The statement must include the beginning and ending balances of moneys held by the township. After the statement has been reviewed at the annual township meeting, it must be filed in the office of the township clerk, ~~except that if~~. If the offices of township clerk and treasurer have been merged, such statement shall be filed with the chairman of the board of township supervisors. A duplicate of the statement at the same time shall be filed by the township treasurer with the county auditor ~~of his~~ county.

SECTION 4. AMENDMENT. Section 58-11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-11-03. Auditing accounts of treasurer and other township officers. At its meeting on the second Tuesday of March in each year, the board of auditors shall examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as treasurer. At such the meeting, the board shall audit the accounts of all other township officers who are authorized to receive or disburse money of the township. If a new treasurer has been elected at the annual meeting, the board of auditors shall audit the final statement of the outgoing treasurer at a meeting on the fourth Tuesday in March.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 734

HOUSE BILL NO. 1340
(Representatives Laughlin, Melby)
(Senator Wogsland)

TOWNSHIP CLERK AND TREASURER COMPENSATION

AN ACT to amend and reenact sections 58-07-01 and 58-08-01 of the North Dakota Century Code, relating to compensation of township clerks and treasurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-07-01. Compensation and fees of clerk. The township clerk shall receive as compensation for his services ten fifteen dollars a day for each day necessarily devoted to the work of his the clerk's office. He The clerk shall receive as reimbursement for expenses fifteen twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of his the clerk's duties. He shall be paid fees and not per diem for the following services-

- 1- For serving notices of election upon township officers, twenty-five cents each.
- 2- For filing any papers required to be filed in his office, ten cents each.
- 3- For publishing notices required by law, twenty-five cents each.
- 4- For recording any order, instrument, or writing authorized by law, ten cents for each one hundred words.
- 5- For copying any record or instrument on file in his office and certifying the same, ten cents for each one hundred words to be paid by the person applying for the same The clerk may not receive more than four hundred fifty dollars in any year. In those townships in which the offices of township clerk and treasurer have been merged, the person

elected to fill the new office shall receive compensation as township ~~treasurer~~ clerk only.

SECTION 2. AMENDMENT. Section 58-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-08-01. Compensation. Each township treasurer shall receive for services fifteen dollars a day for each day necessarily devoted to the work of the office and twenty cents for each mile [1.61 kilometers] necessarily traveled in the performance of such duties. The township treasurer may not receive more than ~~two~~ four hundred fifty dollars in any ~~one~~ year nor be allowed a percentage on the balance turned over to the treasurer's successor in office.

Approved April 1, 1987
Filed April 2, 1987

WAREHOUSING AND DEPOSITS

CHAPTER 735

HOUSE BILL NO. 1582
(Representatives Starke, Nowatzki, Shide)
(Senators Kelsh, Axtman, Langley)

GRAIN QUALITY DISPUTES

AN ACT to amend and reenact section 60-02-05 of the North Dakota Century Code, relating to the determination of quality factors of grain by federal licensed inspectors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-05. Duties of inspector.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade or dockage, or both, of any grain, an average sample of at least three pints of said grain in dispute may be taken together by both parties interested. Such sample shall be certified by both the owner and the warehouseman as being a true and representative sample of the grain in dispute on the day upon which the grain was delivered. Such sample shall be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, to the commission, for inspection by the federal licensed inspector, who will examine said grain and adjudge what grade or dockage, or both, said sample of grain is entitled to under the inspection rules and grades as promulgated by the secretary of agriculture of the United States. If the grain in question is damp or otherwise out of condition, such sample shall be placed in an airtight container.
2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at

least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreeable third party, who may examine the grain and determine the quality factors in dispute. The determination made by the inspector, or the third party, shall be used in the settlement of the dispute.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 736

HOUSE BILL NO. 1106
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

PUBLIC WAREHOUSEMAN BONDS

AN ACT to amend and reenact subsection 2 of section 60-02-09 of the North Dakota Century Code, relating to public warehouseman bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 60-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation. ~~On or before July thirty-first of each year, the surety shall file a verification certificate with the commission stipulating that the bond coverage continues in full effect.~~

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 737

HOUSE BILL NO. 1347
(Kingsbury, Skjerven)

RAILROAD RIGHT OF WAY

AN ACT to amend and reenact sections 60-06-01, 60-06-05, and 60-06-06.1 of the North Dakota Century Code, relating to warehouses on railroad rights of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-01. Who may make application for warehouse or elevator on railroad right of way. Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railroad station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain or potatoes for the public for hire, may make application in writing to the person, firm, or corporation owning, leasing, or operating the railway at such station or siding for the right, privilege, and easement of erecting and maintaining a public warehouse.

SECTION 2. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-05. Sidetracks to be provided by railroad company on its land. Every railroad company or corporation organized under the laws of this state or doing business therein, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, where grain is or potatoes are or may be stored. The railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses shall not be constructed within one hundred feet [30.48 meters] of any existing structure and shall be at safe fire distance from the station buildings so as not to conflict

essentially with the safe and convenient operation of the road. Where stations are ten miles [16.09 kilometers] or more apart the railroad company, when required so to do by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

* SECTION 3. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-06.1. Arbitration by public service commission Determination - Appropriation. On agreement of all parties concerned, the parties Any party may petition the public service commission to serve as an arbitrator of determine rights governed under this chapter. The commission shall serve as an arbitrator determine the matter in accordance with chapter 32-29 28-32 and the parties' rights of appeal are as limited by chapter 32-29 28-32. The commission shall conduct each hearing required under this section in the county where the right of way at issue is located. The parties requesting to the arbitration determination proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain such those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered or certified mail. Upon order for payment, the parties, within Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the public utility valuation revolving fund in the state treasury. All moneys transferred or deposited in the public utility valuation revolving fund for the payment of costs and expenses incurred under this section are hereby appropriated. These moneys are not subject to section 54-44.1-11.

Approved March 12, 1987
Filed March 16, 1987

* NOTE: Section 60-06-06.1 was also amended by section 22 of Senate Bill No. 2100, chapter 408.

WATERS

CHAPTER 738

HOUSE BILL NO. 1067
(Murphy)

OIL AND GAS WELLS TO WATER WELLS

AN ACT to amend and reenact section 61-01-27 of the North Dakota Century Code, relating to the conversion of oil and gas exploration and production wells to water wells.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-01-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-27. Prohibition on Procedure for converting mineral wells to water wells. In order to protect the public's health, safety, and welfare and to protect this state's ground water supplies, and except for purposes related to chapters 38-08 and 38-08.1, no well that has been drilled for the purpose of the exploration or production of oil or gas may be converted to a water well without first obtaining approval from the industrial commission. Any person who converts an exploration or production well to a water well ~~shall~~ be without first obtaining approval from the industrial commission is guilty of a class A misdemeanor and shall be required to close the well in accordance with state standards and bear all costs associated with the closure.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 739

HOUSE BILL NO. 1108
(Committee on Natural Resources)
(At the request of the State Engineer)

STATE ENGINEER'S AUTHORITY

AN ACT to repeal section 61-02-75 of the North Dakota Century Code, relating to the state engineer's authority to administer oaths and issue subpoenas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 61-02-75 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 740

HOUSE BILL NO. 1101
(Committee on Natural Resources)
(At the request of the Water Commission)

GAME AND FISH DEPARTMENT WATER PERMITS

AN ACT to cancel and declare forfeited water permits numbered 814, 1470, and 1094, relating to the right of the North Dakota game and fish department to appropriate water; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Cancellation of water permit number 814. The right of the North Dakota game and fish department to appropriate five hundred acre-feet of water from the Blacktail Creek for fish propagation and recreation purposes under water permit number 814 is canceled and all rights under the permit are forfeited.

SECTION 2. Cancellation of water permit number 1470. The right of the North Dakota game and fish department to appropriate ninety acre-feet annually and to store eight hundred thirty acre-feet of water from the Blacktail Creek for recreation purposes under water permit 1470 is canceled and all rights under the permit are forfeited.

SECTION 3. Cancellation of water permit number 1094. The right of the North Dakota game and fish department to appropriate ninety-five acre-feet of water from the Little Missouri River for recreation under water permit number 1094 is canceled and all rights under the permit are forfeited.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 741

HOUSE BILL NO. 1298
(Representatives Shaw, Ulmer, Tokach)
(Senators Mushik, W. Meyer)

WATER RESOURCE BOARD IMPROVEMENT AGREEMENTS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to agreements between water resource boards and state and federal agencies for certain improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Water resource boards - Agreements with state or federal agencies for certain improvements. A water resource board may enter into an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount that the district will be obligated to pay in accordance with the agreement, over and above any other funds which are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties which in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the project, and the approximate amount or fraction of the cost which the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special

assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file written protests against the project with the secretary of the board. The notice must also set forth the time and place where the board shall meet to hear and determine the sufficiency of any protests against the project. The notice must be published once each week for two consecutive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located. Within five days after the first publication of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the first publication of the resolution, at which time the board shall hear and determine the sufficiency of the written protests. If the board finds the protests filed within thirty days after the first publication of the resolution contain the names of the owners of a majority by taxable value of the land subject to assessment for the construction of the proposed project, then the protests bar further proceedings. If the board finds the protests to be insufficient the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list all in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24, both inclusive. The provisions of sections 61-16.1-25 through 61-16.1-36, both inclusive, shall be applicable to such assessments and the special warrants issued pursuant to this section.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 742

SENATE BILL NO. 2237
(Committee on Natural Resources)
(At the request of the State Engineer)

APPEALS TO THE STATE ENGINEER

AN ACT to amend and reenact section 61-16.1-23 of the North Dakota Century Code, relating to appeals of assessments to the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-23. Appeal to state engineer. After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed project. Any Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision who or which claims that he or it will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit. The state engineer shall not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question shall be final.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 743

HOUSE BILL NO. 1554
(Representative Dalrymple)
(Senator Tweten)

DRAIN MAINTENANCE

AN ACT to amend and reenact sections 61-16.1-48 and 61-21-43 of the North Dakota Century Code, relating to the maintenance of drains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-48 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-48. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing an assessment drain ~~shall~~ or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-16.1-26. In cases where no assessment for construction costs or reassessment of benefits has been made, the water resource board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available in accordance with the provisions of this chapter for the establishment of a new project. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

SECTION 2. AMENDMENT. Section 61-21-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-43. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing a drain ~~shall~~ or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro

rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-21-44. In cases where no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 744

HOUSE BILL NO. 1217
(Committee on Natural Resources)
(At the request of the State Engineer)

MAINTENANCE OF WATER PROJECTS

AN ACT to create and enact two new sections to chapter 61-16.1 of the North Dakota Century Code, relating to financing the maintenance of water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Petition for maintenance - Bond required. A written petition for maintenance of a project other than an assessment drain may be made to the board under this section. The petition shall designate the maintenance requested. The petition must be signed by six, or if a majority is less than six, by a majority of the landowners within the area benefited by the project. The petitioners shall supply a surety bond in the amount of two hundred fifty dollars. The bond must be for the payment of costs if the board finds the petition was improvidently made.

SECTION 2. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of project - Exception. If, upon receipt of a petition meeting the requirements of section 1 of this Act, or upon the board's own motion, the board determines a project established under the provisions of this chapter requires maintenance, the board may provide the required maintenance by using the same method used initially to finance the project. Unless otherwise provided by law or agreement, the participation of the state in financing the initial project does not bind the state to finance any maintenance. Any maintenance financed through special assessments may not exceed the maximum levy established by 61-16.1-45. This section does not apply to maintenance of assessment drains.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 745

SENATE BILL NO. 2540
(Senator Tweten)
(Representatives Dalrymple, Kent, Almlie)

FEDERAL PROJECT MAINTENANCE ASSESSMENTS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to maintenance assessments for federally constructed projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Maintenance of federally constructed projects - Assessment district established. If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed fifty cents per acre annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefore by a vote of two-thirds of the members and the board of county commissioners of the county must approve and levy the assessments to be made by a vote of two-thirds of its members.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 746

SENATE BILL NO. 2032
(Legislative Council)
(Interim Agriculture Committee)

WATER PROJECT DEVELOPMENT ASSISTANCE

AN ACT to provide assistance to landowners in developing water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Commission" means the state water commission.
2. "Cost of works" means necessary costs for designing, engineering, surveying, and construction of a water project.
3. "Landowner" means any person who holds ownership rights in real estate sufficient to have a legally protectable interest in the real estate, including a tenancy or leasehold interest.
4. "Lender" includes the Bank of North Dakota.
5. "Person" does not include any governmental entity or an urban or rural water users association.
6. "Water project" means any project for conserving, draining, and distributing water, including reservoirs, dams, diversion canals, distribution canals, channels, ditches, lateral ditches, drains, dikes, and pumping units, constructed for the purpose of irrigation, watering stock, or supplying water for domestic, agricultural, recreational, fish and wildlife use, flood control, drainage, water conservation and regulation, storage, diversion, or carrying of water.

SECTION 2. Industrial commission to issue bonds - Program administered by commissioner of agriculture. Bonds may be issued by the industrial commission pursuant to chapter 4-36 for the purpose of making loans

to lenders and requiring the proceeds of the loans to be used by the lenders to make loans to landowners for water projects. The industrial commission, for the administration of the program established pursuant to this Act, may delegate to the commissioner of agriculture, and the commissioner of agriculture is authorized to exercise, all administrative powers granted to the industrial commission pursuant to chapter 4-36.

SECTION 3. Contents of application - Approval by water commission. A water project and the cost of works must be approved by the commission before a loan to finance the cost of works is eligible to be made by a lender with the proceeds of a loan from the industrial commission. An application for approval must be in writing in a form prescribed by the commission and must include:

1. The name and address of the applicant;
2. An economic analysis of the water project;
3. An engineering analysis of the water project;
4. An analysis of the water project's impact upon surrounding land and landowners;
5. Copies of all governmental permits and licenses and private rights or permissions required to complete the water project;
6. Maps, plans, and other documentation describing the water project and its location;
7. Proof of the necessary ownership rights to construct the water project; and
8. Any other information the commission may require.

SECTION 4. Review of applications - Conditions - Approval. An applicant shall submit the application to the commission. The commission shall review all applications received. If the commission determines that further information is required or that the proposed water project is not meritorious or feasible, the application must be returned to the applicant. Upon return of the application, an applicant may provide the information or make necessary modifications and refile the application. An application that has been returned twice may not be resubmitted without prior approval of the commission. If no further information is required and the commission determines that the proposed water project is meritorious and feasible, the commission shall approve the application and forward it to the commissioner of agriculture.

SECTION 5. Meritorious and feasible water project - Determination. A water project is meritorious and feasible if it meets the following criteria:

1. The benefit of the water project must exceed all costs of the water project, or be beneficial for water conservation, fish and wildlife, and recreation use.
2. The water project must be designed, engineered, surveyed, and constructed in a safe manner using existing proven knowledge and techniques.
3. All governmental permits and rights and private rights or permissions required to complete the water project must be obtained.

SECTION 6. Eminent domain unaffected. The approval or provision of financial assistance for any water project under this Act does not change the right of any entity to exercise the power of eminent domain.

SECTION 7. Assumption of liability - Condition to obtaining funding. The state assumes no liability and provides no guarantee that a water project that is financially assisted under this Act will not cause damages or will operate as expected. In order to obtain any financial assistance under this Act, a landowner shall agree in writing to indemnify and hold harmless the state, its employees, and its agents and assigns, for any liability or claim of liability arising from the establishment, construction, reconstruction, repair, maintenance, or operation of the water project.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 747

SENATE BILL NO. 2902
(Select Committee on Appropriations)
(At the request of the Water Commission)
(Approved by the Committee on Delayed Bills)

SOUTHWEST PIPELINE CONTRACT PREFERENCES

AN ACT to amend and reenact section 61-24.3-03.1 of the North Dakota Century Code, relating to a preference for residents on Southwest Pipeline Project contracts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.3-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24.3-03.1. Preference for resident pipeline manufacturers and bidders for labor and services. Any contracts for the purchase of pipeline materials, labor, or services awarded by the state water commission in regard to the construction of the southwest water pipeline project must be awarded to North Dakota resident pipeline manufacturers and North Dakota resident bidders for labor and services making the lowest responsible bids if those bids do not exceed by more than five percent the lowest responsible bid submitted by a nonresident pipeline manufacturer or bidder for labor or services. As used in this section, "North Dakota resident pipeline manufacturers and bidders for labor or services" means bidders or sellers who have maintained a bona fide place of business within this state for at least five years prior to the date on which the contract bid on is awarded. If the state water commission awards any contract for pipeline materials, labor, or services in regard to construction of the southwest water pipeline project to a nonresident bidder, the commission shall publicly give notice in a newspaper of general circulation regarding the specific reasons why it did not award the contract to a resident bidder. This section shall not apply to contracts that involve federal moneys where a preference would be contrary to federal laws or regulations or to architect, engineer, professional right of way, and land surveying services.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on December 8, 1986.

Approved December 5, 1986
Filed December 8, 1986

CHAPTER 748

HOUSE BILL NO. 1365
(Representatives Wald, Martin, Meyer)
(Senators Krauter, David)

SOUTHWEST PIPELINE TREATMENT PLANTS

AN ACT to amend and reenact section 61-24.3-04 of the North Dakota Century Code, relating to the extent and type of water treatment and the location for water treatment plants for the southwest pipeline project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.3-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24.3-04. Water treatment. As provided in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736, dated September 1982, the construction of the southwest pipeline project includes a single water treatment plant near the source for treatment of water. The extent and type of water treatment and the location of a water treatment plant or plants for the southwest pipeline project shall be determined by the commission, in accordance with law and as in the judgment of the commission the interests of the state and the water user entities of the southwest pipeline project are best served. In determining the location of the water treatment plant or plants, the commission may only consider alternatives that will provide treated water to all potential using entities at a cost not to exceed the cost of water from the single treatment facility originally provided for in the engineering preliminary design final report for the southwest pipeline project, state water commission project no. 1736 dated September 1982. Any existing water treatment facility that is to be used in the final pipeline design must be made available to the state in operable condition free of deferred maintenance costs and at a cost that does not exceed the actual depreciation, maintenance, and operation costs of that facility. A water treatment facility is in operable condition if, at the time it becomes part of the southwest pipeline project, it is meeting the needs of its current users. Capital improvements necessary for upgrading any existing water treatment facility to be used in the southwest pipeline project must be borne by the state water commission.

Approved April 14, 1987
Filed April 15, 1987

WEEDS

CHAPTER 749

HOUSE BILL NO. 1286
(O. Hanson, Tokach)

NOXIOUS WEED CERTIFICATES

AN ACT to create and enact a new section to chapter 63-01.1 of the North Dakota Century Code, relating to certification of gravel and sand pits and hay as being not contaminated with noxious weeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Noxious weed certification - Gravel and sand pits and hay.

1. The commissioner, after consultation with the cooperative extension service, shall adopt standards for certifying that gravel or sand surface mining operations and hay produced for resale are not contaminated with noxious weeds. The standards must identify the extent noxious weeds are allowed with certification.
2. The county weed board may, after consultation with the cooperative extension service, certify gravel or sand surface mining operations and hay produced for resale as not contaminated with noxious weeds.
3. The commissioner shall adopt a schedule of fees that county weed boards and the cooperative extension service may charge for inspecting, testing, analyzing, and certifying gravel or sand surface mining operations and hay.
4. Certification of gravel or sand surface mining operations or hay is not a warranty of any kind as to the quality of the gravel, sand, or hay inspected and certified, including merchantability, fitness for a particular purpose, or absence of contamination of any kind. The only representation made is that a gravel or sand surface mining operation or hay produced for resale has been inspected for contamination by noxious weeds under rules adopted by the commissioner.

Approved March 12, 1987
Filed March 16, 1987

WORKMEN'S COMPENSATION

CHAPTER 750

HOUSE BILL NO. 1303
(Representatives Graba, Schneider, Frey)
(Senator Ingstad)

FIREMEN'S OCCUPATIONAL CANCER

AN ACT to amend and reenact subdivision d of subsection 12 of section 65-01-02 of the North Dakota Century Code, relating to definition of diseases fairly traceable to employment under the workmen's compensation law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision d of subsection 12 of section 65-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Provided However, any condition or impairment of health of a full-time paid fireman or law enforcement officer caused by lung or respiratory disease, hypertension, or heart disease, or occupational cancer in a full-time paid fireman, resulting in total or partial disability or death shall be is presumed to have been suffered in the line of duty and shall. The condition or impairment of health may not be attributed to any disease existing prior to such before that total or partial disability or death unless the contrary be is shown by competent evidence; provided, further, that such. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid fireman and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid fireman. A full-time paid fireman or law enforcement officer shall have is not eligible for the benefit provided under this subdivision unless that full-time paid fireman or law enforcement officer has completed two years of continuous service and have has successfully passed a physical examination which examination fails to reveal any evidence of such a condition.

Approved April 9, 1987
Filed April 9, 1987

* NOTE: Section 65-01-02 was also amended by section 3 of House Bill No. 1304, chapter 298.

CHAPTER 751

SENATE BILL NO. 2267
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

WORKERS COMPENSATION BUREAU

AN ACT relating to changing the name of the workmen's compensation bureau of North Dakota to the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Workers compensation bureau. The North Dakota legislative council is hereby authorized to delete, where appropriate, "workmen's compensation bureau" wherever it appears in the North Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "workers compensation bureau". Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative assembly that the workers compensation bureau shall be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the workmen's compensation bureau.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 752

SENATE BILL NO. 2232
(Committee on Judiciary)

(At the request of the Workmen's Compensation Bureau)

WORKMEN'S COMPENSATION ATTORNEYS' FEES

AN ACT to amend and reenact section 65-02-08 of the North Dakota Century Code, relating to payment of attorney's fees in workmen's compensation proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall make, promulgate, and enforce such rules, not inconsistent with the provisions of this title, as may be necessary to carry out the provisions of this title. All fees on claims for legal, medical, and hospital services rendered under this title to any claimant shall be in accordance with schedules of fees adopted or to be adopted by the bureau. The bureau shall specify the amount allowable for court reporter and attorney's fees in proceedings before the bureau and shall pay the same from the bureau general fund, provided further that proceedings are defined as commencing after action by the bureau which reduces or denies a claim. Such attorney's fees shall constitute the entire remuneration for the claimant's attorney for all services before the bureau. Nothing provided herein shall be construed to prevent a claimant or employer from hiring or paying his or her own attorney.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 753

SENATE BILL NO. 2132
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

**WORKMEN'S COMPENSATION DEPENDENCY
BENEFITS**

AN ACT to amend and reenact section 65-05-09 of the North Dakota Century Code, relating to an increase in workmen's compensation weekly dependency benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate compensation. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the weekly wage of the claimant, computed to the next highest dollar, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in this state, computed to the next highest dollar. If an employee is disabled due to an injury, that employee's benefits will be based upon the wage at the time of the commencement of the first disability. However, if an employee suffers disability but is able to return to employment for a period of twelve months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher; and the benefits shall be those in effect at the time of that recurrence. In case of temporary total or permanent total disability, there shall be paid to such disabled employee an additional sum of five ten dollars per week for each child of the employee. Dependency awards for the children may be made directly to either parent or guardian at the discretion of the bureau. In no case shall the compensation or combined compensation and dependency award exceed the weekly wage of the employee after deductions for taxes, except in the case of volunteer firemen and volunteer disaster emergency trainees. When an employee who is permanently and totally disabled and must be maintained in a nursing home or similar facility has no dependent parent, spouse, or children, part or all of his weekly compensation may be used by the bureau to help defray the cost of such care.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 754

SENATE BILL NO. 2229
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

WORKMEN'S COMPENSATION DEATH BENEFITS

AN ACT to amend and reenact section 65-05-17 of the North Dakota Century Code, relating to the removal of a cap on workmen's compensation death benefits; and to provide for retroactive application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the spouse or guardian of the orphaned child or children of the decedent, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed two hundred ten dollars per week, until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent no longer meets the definition of child in this title. Where there is more than one orphaned child of a decedent, death benefits shall be divided equally among guardians. In no case shall total death benefits be less than fifty percent of the maximum weekly death benefits. In no case shall total death benefits exceed one hundred ~~seventy-five~~ ninety-seven thousand dollars as a result of any employee's death.
2. To each child of the deceased employee, the amount of seven dollars per week. The bureau, in its discretion, may make this payment directly to the child of the deceased employee or to the surviving parent or guardian of the child.

In addition to the awards herein, the commissioners shall make an award in the sum of three hundred dollars to the spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars shall be divided equally among the guardians.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to cases arising after June 30, 1983.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 755

SENATE BILL NO. 2131
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

ASSIGNMENT OF WORKMEN'S COMPENSATION CLAIMS

AN ACT to amend and reenact section 65-05-29 of the North Dakota Century Code, relating to assignment of claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-29. Assignment of claims void - Claims exempt. Any assignment of a claim for compensation under this title shall be void. All compensation and claims therefor shall be exempt from ~~all~~ claims of creditors except either of the following:

1. A child support obligation ordered by a court of competent jurisdiction.
2. A claim by job service North Dakota for reimbursement of unemployment benefits, for the amount that was paid by job service during the period for which the claimant is found eligible for temporary total, or permanent total disability benefits, not to exceed the disability award actually made by the bureau.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 756

HOUSE BILL NO. 1187
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

VOCATIONAL REHABILITATION BENEFITS

AN ACT to amend and reenact section 65-05.1-06 of the North Dakota Century Code, relating to limiting vocational rehabilitation benefits to two years, except in extraordinary circumstances, and to relocation and remodeling expense.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-06. Rehabilitation allowance. In the event of a contract as provided in section 65-05.1-05, the bureau, in lieu of temporary total, temporary partial, and permanent total benefits may award a rehabilitation allowance to any claimant in order to effect the purpose of the contract. The rehabilitation allowance shall be limited to the amount and purpose specified in the rehabilitation contract but shall not exceed an amount equal to ~~the same amount of two years'~~ weekly compensation and dependent benefits ~~that the claimant is entitled to receive~~ plus twenty-five percent, ~~except in cases of catastrophic injury in which case additional rehabilitation benefits may be awarded in the discretion of the commissioners.~~ Catastrophic injury is defined as an acute disabling injury rendering a worker permanently and totally disabled that requires rehabilitation services in order to return the worker to gainful employment. In the event the claimant successfully concludes the terms of the contract, additional awards, not to exceed a total of five ten thousand dollars for the life of the claimant, regardless of any subsequent claim, can be made for the actual expenses of relocation or remodeling of living and business facilities as the claimant's condition may require.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 757

HOUSE BILL NO. 1305
(Representatives Graba, Haugland, Frey)
(Senators Schoenwald, Stenehjem)

**WORKMEN'S COMPENSATION SUPPLEMENTAL
BENEFITS**

AN ACT to amend and reenact section 65-05.2-02 of the North Dakota Century Code, relating to supplementary workmen's compensation benefits; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-02. **Supplementary benefits - Amount.** Claimants who are eligible for supplementary benefits and who are receiving temporary total disability benefits or permanent total disability benefits ~~shall~~ are entitled to receive a weekly benefit in an amount not less than of at least one hundred ~~forty-three~~ fifty dollars per week. Claimants who are eligible for supplementary benefits and who are receiving death benefits ~~shall~~ are entitled to receive a weekly benefit in an amount not less than eighty-four of at least ninety dollars per week.

SECTION 2. APPLICATION OF ACT. This Act applies to benefits payable after June 30, 1987.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 758

HOUSE BILL NO. 1235
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

BOILER INSPECTOR COMMISSIONS

AN ACT to amend and reenact section 65-12-05 of the North Dakota Century Code, relating to special boiler inspector commissions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-12-05. Special inspector commission. Upon the written request of-

- 1- Any insurance company authorized to insure boilers in this state against loss from explosion, or
- 2- Any self-insured company who has employees for the purpose of inspecting its own boilers in this state, a

1. A special inspector commission may be issued by the bureau to an inspector in the employ of said a company listed in subdivision a or b, provided that such inspector shall have previously passed the examination prescribed by the national board of boiler and pressure vessel inspectors, upon the written request of:

a. Any insurance company authorized to insure boilers in this state against loss from explosion.

b. Any self-insured company that has employees for the purpose of inspecting its own boilers in this state.

2. All inspections made by a special inspector must be performed in accordance with this chapter and a complete report of such inspections must be filed with the bureau in the time, manner, and form as prescribed by the bureau.

3. If a complete report is not filed with the bureau within ninety days from the certificate due date, the chief boiler inspector may make the required inspections, and a special inspection fee as determined by the bureau for each boiler inspected, plus reasonable costs of mileage, meals, and hotel expenses incurred must be charged to the insurance company or self-insured company insuring the boilers, unless extensions of time are granted by the chief boiler inspector. Any special inspection fee assessed cannot exceed one hundred eighty-five dollars per day or one hundred dollars per half day of four hours or less for boiler inspection activities, plus payment for mileage, meals, and hotel expenses as allowed by section 44-08-04 and 54-06-09.
4. The chief boiler inspector may, at his discretion, inspect any boiler to which a special inspector commission applies.
5. The bureau may, for cause, suspend or revoke any special inspector commission.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 759

SENATE BILL NO. 2170
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

BOILER INSPECTION FEES

AN ACT to amend and reenact section 65-12-11 of the North Dakota Century Code, relating to boiler inspection fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-12-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-12-11. **Inspection fees.** The owner or user of a boiler required by this chapter to be inspected by the boiler inspector, shall pay to the bureau, upon completion of inspection, fees, or a combination of fees, which shall be determined annually by the bureau. The bureau may determine and annually adjust a fee scale for the internal inspection of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than ~~thirty-five~~ seventy-five dollars may be charged or collected for any and all inspections of any boiler in any one year except for special inspections made upon request. All other inspections made by the boiler inspector including shop inspections and special inspections when requested by the owner or user of a boiler, shall be charged for according to the current fee scale applicable to an internal inspection plus any additional expenses incurred in connection with the inspection.

The bureau shall charge a fee of ~~three ten~~ dollars for each certificate of inspection issued as the result of inspections authorized under section 65-12-05. The fees are the liability of the insurance company or self-insured company and shall be paid in accordance with rules established by the bureau.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 760

SENATE BILL NO. 2269
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

CRIME VICTIMS REPARATIONS AWARDS

AN ACT to amend and reenact subdivision c of subsection 4 and subdivision a of subsection 6 of section 65-13-03, and subsections 2 and 8 of section 65-13-06 of the North Dakota Century Code, relating to awards and limitations of crime victims reparations; and to repeal subsection 7 of section 65-13-06 of the North Dakota Century Code, relating to the minimum economic loss for crime victims reparations awards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 4 of section 65-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death or the board determines that such conduct arose out of the use of intoxicating liquor or controlled substances as provided in section 39-08-01 or was followed by failure to give information and render aid as provided in sections 39-08-04 and 39-08-06.

SECTION 2. AMENDMENT. Subdivision a of subsection 6 of section 65-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment

and care. The term includes a total charge not in excess of ~~five~~ fifteen hundred dollars for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

SECTION 3. AMENDMENT. Subsections 2 and 8 of section 65-13-06 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Reparations may not be awarded unless the claim is filed with the board. A claim for reparations must be filed within one year after the date of injury or death upon which the claim is based. When the board cannot determine with certainty the date of injury, then the date of injury is the first date that a reasonable person should have known that the injury resulted from criminally injurious conduct. The board may extend the time for filing when it determines that the interests of justice otherwise require. There is no appeal from a board decision not to extend the filing time, reopen, or reinvestigate a claim.
8. Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed ~~two~~ three hundred dollars per week.

SECTION 4. REPEAL. Subsection 7 of section 65-13-06 of the North Dakota Century Code is hereby repealed.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 761

HOUSE BILL NO. 1210
(Committee on Industry, Business and Labor)
(At the request of the Workmen's Compensation Bureau)

CRIME VICTIMS REPARATIONS BENEFITS

AN ACT to amend and reenact subsection 3 of section 65-13-06 of the North Dakota Century Code, relating to awards and limitations of crime victims reparations when the offender lives in the same household as the victim.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 65-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice. Unless the board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 762

HOUSE BILL NO. 1565
(Kloubec)

HAZARDOUS SUBSTANCE INFORMATION

AN ACT to create and enact a new section to chapter 65-14 of the North Dakota Century Code, relating to jurisdiction of the employee information program; and to repeal subsection 6 of section 65-14-02 of the North Dakota Century Code, relating to jurisdiction of the employee information program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Federally regulated employer exempt from chapter. This chapter does not apply to an employer that is regulated under any federal law that requires employee information programs dealing with hazardous substances. This chapter does not preclude the bureau from conducting normal safety inspections as otherwise provided by law.

SECTION 2. REPEAL. Subsection 6 of section 65-14-02 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987
Filed March 23, 1987

VETOED MEASURES

CHAPTER 763

HOUSE BILL NO. 1040
(Legislative Council)
(Interim Indian Jurisdiction Committee)

REPORTING OF FUNDS FOR RESERVATION SERVICES

AN ACT to create and enact a new subsection to section 54-06-04 of the North Dakota Century Code, relating to the preparation of reports by executive and administrative officers and departments.

VETO

March 13, 1987

The Honorable Richard Kloubec
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

Administrative officers in state agencies are currently required to submit biennial reports. Those reports currently contain most of the information required by this legislation, although perhaps not in the form contemplated. Placing additional paperwork and reporting burdens upon state agencies at a time when we are considering reductions in personnel is counter-productive.

Furthermore, after conferring with several administrative agency heads, I have been informed that the accuracy and utility of such information would be subject to serious question. That is, there are Indians not residing on reservations who receive state services;

and there are Indians residing on reservations who do not receive state services.

As a noted legislator said recently, "State government is becoming increasingly bureaucratic with too much paper shuffling and time and money being spent on unnecessary reports and computations." I want to help eliminate such unnecessary reports and computations.

In short, the benefits of this bill are very doubtful.

Therefore, I hereby veto House Bill 1040.

Sincerely,

GEORGE A. SINNER
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. A new subsection to section 54-06-04 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

All executive and administrative officers and departments required by this section to submit biennial reports shall include in their reports a detailed statement of all sources and expenditures of public funds for state services that benefit Indians residing on Indian reservations in this state including a presentation of sources and expenditures associated with each category of service provided. The director of the office of management and budget shall compile the information submitted pursuant to this subsection in the biennial report required of the director in subsection 1.

Disapproved March 12, 1987
Filed March 20, 1987

CHAPTER 764

HOUSE BILL NO. 1044
(Legislative Council)
(Interim Judicial Process Committee)

AGRICULTURAL LIENS

AN ACT to create and enact two new chapters to title 35 of the North Dakota Century Code, relating to statutory agricultural liens; to amend and reenact sections 11-18-14, 11-29-24, 35-21-01, and subsection 9 of section 41-09-28 of the North Dakota Century Code, relating to duties of the county register of deeds, county seed, feed, and fuel liens, release of liens, and to protection of buyers of goods; and to repeal chapters 35-07, 35-08, 35-09, and 35-10 of the North Dakota Century Code, relating to threshing or drying liens, crop production liens, motor fuel liens, fertilizer, farm chemicals, or seed liens, and sugar beet production liens.

VETO

March 20, 1987

The Honorable Richard Kloubec
Speaker of the House
House of Representatives
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Speaker Kloubec:

As prepared by the Interim Judicial Process Committee, House Bill 1044 was appropriate and important legislation. However,

according to the Secretary of State, an amendment added to that legislation has created a substantial problem.

The amendment added to section 6 of the bill provides that the social security number is not required for a crop, agricultural processor's or agricultural supplier's lien obtained under the act.

Upon consultation with the Secretary of State, we have concluded that, because such liens may be filed in the central notice system and because that system requires a social security number in order for the system to be certified under the Food Security Act of 1985, our central filing system will, in all likelihood, be decertified if this Act is adopted.

I would certainly be willing to reconsider this legislation with appropriate modification.

However, without such modification I must veto House Bill 1044.

Sincerely,

GEORGE A. SINNER
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. AMENDMENT. Section 11-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-18-14. Register of deeds to remove and destroy certain documents - Records to be made. The register of deeds in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in ~~his~~ the register's office, and destroy, all seed liens, ~~labor liens, stallion liens,~~ chattel mortgages, threshing or drying liens, crop production liens, combining liens, agricultural processor's liens, agricultural supplier's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the same upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the register of deeds shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the same was destroyed.

SECTION 2. AMENDMENT. Section 11-29-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-29-24. Lien on crops for seed, feed, or fuel furnished by county - How obtained. In order to secure a lien upon crops for seed, feed, or fuel furnished by the county under this chapter, the county,

through the county auditor, shall comply with the provisions of chapter 35-08 section 4 of this Act.

SECTION 3. A new chapter to title 35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Agricultural processor's lien authorized. Any person who processes any crop or agricultural product is entitled to a lien upon the crop or product processed for the reasonable value of the services performed. As used in this chapter, the term "processor" includes persons threshing, combining, drying, or harvesting any crop or agricultural product. The agricultural processor's lien is effective from the date the processing is completed.

Procedure to obtain lien. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a verified statement in the office of the register of deeds in the county or counties in which the crop or agricultural product was grown. The statement must contain the following information:

1. The name and address of the person for whom the processing was done.
2. The name and address of the processor.
3. A description of the crops or agricultural products and their amount, if known, subject to the lien together with the legal description as to the location where the crops or agricultural products were grown.
4. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.

Priority. An agricultural processor's lien obtained under this chapter has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances.

SECTION 4. A new chapter to title 35 of the North Dakota Century Code is hereby created and enacted to read as follows:

Agricultural supplier's lien authorized. Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. The agricultural supplier's lien is effective from the date the supplies are furnished or the services performed.

Procedure to obtain lien. To obtain an agricultural supplier's lien, the person entitled to the lien, within ninety days

after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of the county or counties in which the crop, agricultural product, or livestock was grown. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with the legal description as to the location of the crops, agricultural products, or livestock.
4. A description and value of the supplies furnished.

Priority. An agricultural supplier's lien obtained under the provisions of this chapter has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances except any agricultural processor's lien.

SECTION 5. AMENDMENT. Section 35-21-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-21-01. Release of lien by undertaking authorized. When any mechanic's lien, garage storage lien, repairman's lien, seed lien, sugar beet production lien, crop production lien, threshing lien, agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the ~~real property or personal~~ property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

SECTION 6. AMENDMENT. Subsection 9 of section 41-09-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes, but is not limited to, liens for threshing; crop or agricultural product processing; crop production; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for such security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state a form

prescribed by him which contains all of the following information:

- a. The name and address of the person engaged in farming operations.
- b. The county of residence of the person engaged in farming operations.
- c. The social security number of the person engaged in farming operations except that the social security number is not required for a crop, agricultural processor's or agricultural supplier's lien obtained under section 3 or 4 of this Act.
- d. The name and address of the secured party or lienholder.
- e. A description of the crops or livestock and their amount, if known, subject to the security interest or lien.
- f. The legal description as to the location of the crops or livestock.

A form filed pursuant to this section is effective for a period of five years. The effectiveness and continuation of the form filed is to be treated as if it were filed as a financing statement.

SECTION 7. REPEAL. Chapters 35-08, 35-09, and 35-10 of the North Dakota Century Code, and chapter 35-07 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Disapproved March 20, 1987
Filed April 1, 1987

CHAPTER 765

HOUSE BILL NO. 1621
(Kretschmar, Stofferahn)

**BANK REAL ESTATE CHARGE OFF AND
AMORTIZATION OF LOAN LOSSES**

AN ACT to create and enact four new sections to chapter 6-03 of the North Dakota Century Code, relating to charging off real estate, and amortization of certain loan losses by banks.

VETO

April 6, 1987

The Honorable Richard Kloubec
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Speaker Kloubec:

House Bill 1621 would allow banks to defer losses on certain types of loans received through the collection of debts.

It would be extremely difficult to apply this legislation because it conflicts with current bank reporting requirements established by the Federal Deposit Insurance Corporation and enforced by federal examination. It does not square with current law, insolvency definitions, generally accepted accounting principles or federal regulatory guidelines. This type of legislation must be enacted on a national basis in order to be effective.

What is more important, HB 1621 would not be of any benefit to borrowers attempting to repay debt obligations.

I have been informed by our Banking Commissioner that several programs, including capital forbearance and loan restructuring, already address the concerns raised by this legislation, and other federal legislation is being proposed as well.

Because it would unnecessarily complicate the interpretation of reporting requirements and would not address the problems of borrowers, I veto House Bill 1621.

Sincerely,

GEORGE A. SINNER
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Monthly chargeoff of real estate - Extension by commissioner - Book value exclusive of chargeoff as bankable asset. Real estate acquired by any bank through the collection of debts in the due course of business may be charged off at one-sixtieth of the acquisition cost of the real estate. The chargeoff must be made monthly within thirty days after the acquisition of the real estate. The commissioner may extend the monthly chargeoff of the real estate upon written request of the bank. The book value of the real estate exclusive of the chargeoff is considered a bankable asset. This section applies to any debts contracted for prior to the effective date of this Act.

SECTION 2. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Increase in chargeoff - Approval by commissioner - Annual review - Notice of modification, revision, or termination of time limits. The commissioner may approve or disapprove time limits of less than five years and may increase the rate of chargeoff to not more than six and two-thirds percent per year. The commissioner shall approve or disapprove a request received from a bank pursuant to section 1 of this Act on a case-by-case basis after considering the material facts, information, and evidence submitted by the bank. The commissioner shall review annually all approvals granted under this section and may modify or extend the approvals granted. The commissioner shall give a bank ten days' notice of any modification, revision, or termination of time limits previously set.

SECTION 3. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Amortization of certain losses. A bank may, prior to an examination or immediately after an examination, amortize a loan loss or amortize each loan classified as a loss, over a period not to exceed fifteen years using the straight-line method of amortization pursuant to rules adopted by the commissioner if the loan:

1. Was in an amount of or was classified in an amount not less than fifty thousand dollars;
2. Was advanced as a business, commercial, or agricultural loan;
3. Was not advanced to any officer, director, or employee of the bank; and
4. Was not the result of fraud or willful abuse on the part of the bank, its directors, or employees.

If the bank amortizes a loan loss before an examination, the bank shall notify the commissioner in writing within thirty days of the action.

SECTION 4. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Loans ineligible for amortization to be charged to reserve. Following a report of examination, any bank loans classified as ineligible for amortization must be charged to the bank's reserve for bad debts account in compliance with applicable rules.

Disapproved April 6, 1987
Filed April 14, 1987

CHAPTER 766

HOUSE BILL NO. 1033
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICES BOARD

AN ACT to create and enact a new section to chapter 50-06 and a new subdivision to subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to the creation of a human services board and the power of the governor to appoint a majority of members of certain boards and commissions; to amend and reenact sections 50-06-01, 50-06-01.1, 50-06-01.3, 50-06-01.4, 50-06-05.1, 50-06-16, and 50-06-17 of the North Dakota Century Code, relating to the authority of the human services board and the structure of the department of human services; and to provide an effective date.

VETO

April 24, 1987

Mr. Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1033 creates a board which would have not only advisory but also policy-making authority over the Department of Human Services.

The board would have to meet very often both to understand the complex human service delivery system and to attempt to formulate policy. Therefore, it would be an expensive creature.

Such a board would also serve to divide loyalties of the Director between it and the Governor, who retains the appointing authority under the bill. It would be extremely difficult for any director to resolve such potentially conflicting loyalties.

Perhaps most important of all, this legislation would create yet another layer of bureaucracy, when the goal of state government must be to streamline and create greater efficiencies. Such a board would be counter-productive in that context.

I support the idea of an advisory board which could give the Governor and Director valuable input without interfering with the functioning of the Department of Human Services. But this bill goes too far.

Therefore, I veto House Bill 1033.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01. Definition "Board" and "department" defined. Whenever the word "department" is As used in this chapter, it shall mean unless the context or subject matter otherwise requires:

1. "Board" means the human services board.
2. "Department" means the department of human services.

SECTION 2. AMENDMENT. Section 50-06-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.1. Department of human services to be substituted for public welfare board of North Dakota and social service board of North Dakota, members of board, and executive director. Wherever the terms "public welfare board of North Dakota", "social service board of North Dakota", "executive director of the public welfare board", "executive director of the social service board", "member of the public welfare board", or "member of the social service board", or any derivative of those terms which, when used in context indicates an intention to

refer to those persons or that board, shall appear in the North Dakota Century Code, the term "department of human services", or the term "executive director of the department of human services", as the case may be, shall be substituted therefor. It is the intent of the legislative assembly that the department of human services shall be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the public welfare board of North Dakota or by the social service board of North Dakota.

SECTION 3. AMENDMENT. Section 50-06-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.3. Executive Appointment of executive director - Appointment-- Compensation. The governor shall appoint the executive director of the department shall be appointed by, and who shall serve at the pleasure of, the governor. The executive director shall take the oath of office required of civil officers by section 44-01-05 and shall be bonded as required of civil officers by section 44-01-06. The executive director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 4. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Human services board - Membership - Meetings - Compensation and expenses - Responsibilities.

1. The human services board consists of seven members appointed by the governor, with the consent of the senate. Each member appointed to the board must possess expertise that the governor determines will assist the board in establishing department policy for the delivery of human services. Before August 1, 1988, the governor shall appoint three members with terms ending June 30, 1990, two with terms ending June 30, 1992, and two with terms ending June 30, 1994. Appointments thereafter are for terms of six years, with the terms commencing on July first. A vacancy on the board may be filled for the unexpired term only. Members serve until their successors are appointed. The governor may remove a member for cause. Members may serve for no more than one full six-year term.
2. Before September 1, 1988, and every July first thereafter, the board shall meet and elect a vice president, a secretary, and other officers as the board determines necessary, and employ staff for the board as it determines necessary. The governor or the governor's designee, who may not be the executive director of the department, shall act as president of the board. The board shall meet quarterly and at other times as the executive director

determines necessary or when called by the president or a majority of the members of the board.

3. All board members are entitled to receive the same compensation for their services as provided in section 54-35-10 for members of the legislative council. Members are entitled to be paid their necessary travel and mileage expenses as provided in sections 44-08-04 and 54-06-09 incurred in attending meetings of the board and while engaged in the performance of their duties.
4. The board shall establish administrative policy for the department which is to be implemented by the executive director. The board may advise the governor concerning the appointment or reappointment of an executive director. The board shall advise the executive director with respect to issues and concerns arising from the executive director's administrative activities and other relevant matters at the request of the executive director.

* SECTION 5. AMENDMENT. Section 50-06-01.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.4. Structure of the department. The department shall include the state hospital, an office of human services, an office of economic assistance and county administration, a vocational rehabilitation division including regional vocational rehabilitation offices, administrative and fiscal support services as the ~~executive director~~ board deems necessary, and as many other subdivisions as the ~~executive director~~ board may deem appropriate, or as may be provided by law.

1. The office of human services shall contain the following divisions:
 - a. Developmental disabilities division.
 - b. Mental health division.
 - c. Children and family services division.
 - d. Aging services division.
 - e. Alcoholism and drug abuse division.
 - f. Crippled children's services division.
2. The office of economic assistance and county administration shall include the following divisions:
 - a. Economic assistance division, including a food stamp unit, an assistance payments unit, a fuel assistance unit, and a child support enforcement unit.

* NOTE: Section 50-06-01.4 was amended by section 18 of House Bill No. 1034, chapter 570.

b. Medical services division.

Regional supervisors of economic assistance shall be collocated with regional human service centers and shall be responsible for maintaining a close working relationship between county social service boards and regional human service centers. The executive director of the department shall be responsible for consulting with and maintaining a close working relationship with the department of health; with the director of institutions and the superintendents of the Grafton state school, the school for the deaf, and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services.

* SECTION 6. AMENDMENT. Section 50-06-05.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-05.1. Powers and duties of the department. The department ~~shall have~~ has the following powers and duties to be administered under the direction of the board by the department through its state office or through regional human service centers or otherwise as directed by ~~it~~ the board:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.

* NOTE: Section 50-06-05.1 was amended by section 30 of House Bill No. 1448, chapter 582.

7. To recommend appropriate social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.
10. To secure, hold, and administer for the purpose for which it is established, any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the board or department, and to administer said funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department including child-care facilities, nonmedical adult-care facilities and maternity homes, and persons or organizations receiving and placing children, and to require such facilities, persons, and organizations to submit reports and information as the department may determine necessary.
12. To permit the making of any surveys of human service needs and activities if ~~deemed by the department~~ determined to be necessary and expedient.
13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever ~~the department deems it~~ necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena ~~shall~~ may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
14. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having

- custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the Grafton state school, state hospital, or North Dakota industrial school.
15. To provide marital counseling to individuals ordered to participate in such treatment by the family court.
 16. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
 17. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.
 18. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county administration of that program. Provided, however, that the ~~department~~ board with the consent of the budget section of the legislative council may terminate the program should the rate of federal financial participation in administrative costs provided under Public Law 93-347 be decreased or limited, or should the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
 19. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
 20. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. Provided, however, that the ~~department~~ board with the consent of the budget section of the legislative council may terminate the program should the rate of federal financial participation in administrative costs be decreased or limited to less than fifty percent of total

administrative costs, or should the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.

21. To provide an administrative appeal and hearing process for all claimants who are aggrieved by a decision of the department. Provided, however, that upon request of any claimant, the department shall refer the claimant's appeal or request for administrative hearing to the attorney general for the appointment of a hearing officer who is not an employee of the department and who has not been involved in the decision from which the claimant has appealed.

SECTION 7. AMENDMENT. Section 50-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-16. Authority to adopt rules. The department may adopt rules necessary to carry out ~~its~~ the responsibilities of the department under this chapter. All rules ~~adopted shall~~ must be approved by the board before adoption and must be published in the North Dakota Administrative Code. Rules adopted by agencies prior to January 1, 1982, which relate to functions or agencies covered by this chapter shall remain in effect until such time as they are specifically amended or repealed by the department.

SECTION 8. AMENDMENT. Section 50-06-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-17. Biennial report to governor and office of management and budget - Budget estimates. The department shall submit ~~to the governor and the office of management and budget~~ a board shall review and approve the biennial report as prescribed by section and budget estimate prepared and submitted by the department pursuant to sections 54-06-04 and 54-44.1-04.

SECTION 9. A new subdivision to subsection 1 of section 54-07-01.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

The human services board.

SECTION 10. EFFECTIVE DATE. This Act becomes effective on July 1, 1988.

Disapproved April 24, 1987
Filed April 27, 1987

CHAPTER 767

HOUSE BILL NO. 1019
(Committee on Appropriations)

**LIGNITE DEVELOPMENT RESEARCH
APPROPRIATION**

AN ACT making an appropriation for defraying the expenses of the commissioner of university and school lands of the state of North Dakota; to authorize the industrial commission acting as the North Dakota building authority to issue evidences of indebtedness for payment of the loans, accrued interest, and special assessments on the old Dickinson experiment station; to provide for a transfer from the lignite research fund; and to declare an emergency.

VETO

April 30, 1987

Mr. Ben Meier
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Meier:

House Bill 1019 provides, among other appropriations, an appropriation of \$250,000 to the University of North Dakota for lignite development research projects.

That expenditure would virtually deplete the Lignite Research Fund created this session in House Bill No. 1065 and placed under the jurisdiction of the Industrial Commission. Furthermore, even the

full amount appropriated by House Bill 1019 may not be available if lignite mining fails to meet expectations.

Because the Lignite Research Fund can provide a long-term resource for lignite research projects, especially if utilized wisely to leverage other funds from private and federal sources, it is essential that some of that Fund remain intact for future purposes to better assist UND as well as other research efforts.

Therefore, I line-item veto only Section 5 of House Bill 1019. The remainder of the bill will have full force and effect.

Sincerely,

GEORGE A. SINNER

Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

* SECTION 5. LIGNITE DEVELOPMENT RESEARCH - APPROPRIATION - TRANSFER. There is hereby appropriated and transferred by the industrial commission, at the direction of the office of management and budget, from the lignite research fund as created by the 1987 legislative assembly, to the university of North Dakota, the sum of \$250,000, or so much thereof as may be necessary, for lignite development research projects for the biennium beginning July 1, 1987, and ending June 30, 1989.

Disapproved April 29, 1987

Filed April 30, 1987

* NOTE: Section 5 of House Bill No. 1019 was line-item vetoed. Only the vetoed portion of the bill is printed here. The bill is printed in its entirety at Session Laws chapter 19.

CHAPTER 768

SENATE BILL NO. 2248
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PERS INVESTMENTS

AN ACT to create and enact a new subsection to section 54-52-01 of the North Dakota Century Code, relating to a definition of investment counselor in the public employees retirement system law; to amend and reenact subsection 6 of section 54-52-04 and sections 54-52-16 and 54-52-25 of the North Dakota Century Code, relating to authority of the public employees retirement system board; and to repeal subsection 6 of section 54-52-01 of the North Dakota Century Code, relating to a definition of funding agent in the public employees retirement system law.

VETO

March 27, 1987

The Honorable Rolland W. Redlin
President Pro Tempore
North Dakota Senate
Senate Chamber, State Capitol
Bismarck, North Dakota 58505

Dear President Redlin:

Senate Bill No. 2248 makes two major changes which are of concern and would hinder cooperation and coordination between state agencies relative to investment activities.

Under the new definition of "investment counselor" set out in this bill, the Bank of North Dakota would be excluded from providing

investment services to the Public Employees Retirement System. North Dakota is fortunate to have the only state-owned bank in the United States. We should be utilizing the bank to its maximum potential rather than eliminating areas where it can serve the people of North Dakota.

Secondly, Senate Bill 2248 would allow the Public Employees Retirement Board to establish in-house investment management. The Bank is now working with the Retirement Board to provide the services they need. It is not cost-effective to have two state agencies providing the same investment services.

Currently the State Investment Board has undertaken a major effort to coordinate and share services to avoid duplication and save dollars for the various funds. During this difficult financial time in our history, it is important we avoid duplication among our state agencies and encourage cooperation.

Therefore, I veto Senate Bill 2248.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-52-01 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Investment counselor" means a professionally qualified person whose principal livelihood is obtained from giving objective and impartial investment advice, and who provides investment management of security portfolios on a continuous basis.

SECTION 2. AMENDMENT. Subsection 6 of section 54-52-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. a. The Through its investment officer, the board shall select the funding agent or agents and establish an investment agreement contract. The contract must authorize the funding agent or agents to hold and invest moneys for the system. No moneys of the system may be invested by the board. The moneys of the system must be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed manage the assets of the system. The board

may contract with investment counselors to assist in managing the assets of the system. The board shall establish a statement of investment goals, objectives, and policies under which the investment officer and each investment counselor shall manage the assets of the system. The basis for managing the assets of the system is the prudent man rule of investments.

- b. All securities, agreements, contracts, or and instruments of value must be delivered to the Bank of North Dakota, or its agents board's master custodian for safekeeping. Except for disbursing money for investment to the funding agent or agents investment counselor or paying prior service benefits, funding agent or agents investment counselor's management fees, performance measurement fees, actuarial consultant fees, auditors fees, or making withdrawal payments and refunds, the board shall expend money only for administrative purposes by preparing an appropriate voucher and submitting such that voucher to the office of management and budget, and as limited by the appropriation first made by the legislative assembly.

SECTION 3. AMENDMENT. Section 54-52-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-16. Appointment of investment counselor - Insurance contracts - Trust agreements. For the purpose of establishing the funding agent or agents appointing an investment counselor, the board may enter into make an insurance contract, agreement, or purchase an insurance policy or policies covering all or any part of the retirement plan adopted, provided the assuring company is a North Dakota corporation or authorized to do business in the this state of North Dakota, or may enter into. The board may also make a contract with any qualified trust company or companies, or combinations of insurance contracts and trust contracts.

SECTION 4. AMENDMENT. Section 54-52-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-25. Limitation of powers Delegation of investment counselor duties prohibited. The funding agent or agents An investment counselor selected by the board shall may not delegate any powers or duties to any person, partnership, or corporation.

SECTION 5. REPEAL. Subsection 6 of section 54-52-01 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Disapproved March 26, 1987
Filed April 15, 1987

CHAPTER 769

SENATE BILL NO. 2306
(Adams)

RECREATION SERVICE DISTRICT LEVIES

AN ACT to amend and reenact sections 11-28.2-02 and 57-15-26.1 of the North Dakota Century Code, relating to compensation and expense reimbursement for members of a board of recreation service district commissioners and mill levy limitations that apply to recreation service districts.

VETO

March 27, 1987

The Honorable Rolland W. Redlin
President Pro Tempore
North Dakota Senate
Senate Chamber, State Capitol
Bismarck, North Dakota 58505

Dear President Redlin:

Senate Bill 2306 would allow recreation service district commissioners to levy a tax for general purposes, in addition to all other levies permitted by law, of up to twenty-five mills on the taxable valuation of property in the district.

That is a significant increase above the current one mill authorized by law.

Furthermore, the only approval required for such an increase is that of a majority of the qualified voters who are present and voting on

the question at the annual meeting. No specific notice of such proposed increase is required prior to the meeting. That is an invitation to abuse.

Because the mill levy increase permitted by this bill is so significant and the procedures required to approve the increase so deficient, I hereby veto Senate Bill 2306.

Sincerely,

GEORGE A. SINNER
Governor

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:**

SECTION 1. AMENDMENT. Section 11-28.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.2-02. Meetings of recreation service districts - Election of board. The first meeting of the recreation service district shall be held within thirty days after the district is organized at a time and place designated by the board of county commissioners. At such meeting, the qualified voters, as defined in section 11-28.2-03, shall elect not less than five qualified voters of the district to serve as members of the board of recreation service district commissioners. Each member elected and qualified shall serve until the first annual meeting of the district. The voters of the district shall assemble and hold an annual meeting during the month of June of each year, at a time and place within the county designated by the board of recreation service district commissioners. In addition to the annual meeting, the board of recreation service district commissioners may call a special meeting of the voters of the district at such time and place as the board may select. For any annual or special meeting the board shall publish notice of the meeting not less than fifteen days prior to the meeting in the official county newspaper of the county in which the district is located and the notice shall be mailed by regular mail to property owners of the district as recorded in the county treasurer's office in which the district is located not less than fifteen days prior to the meeting. Not less than five qualified voters of the district shall be elected to serve on the board of recreation service district commissioners at the annual meeting. Each member so elected shall serve a term of three years, until his successor is elected and qualified. The term of each member shall be established so that the term of approximately one-third of the members shall terminate each year. The members of such the board shall serve without compensation may be compensated not more than twenty-five dollars for each meeting of the board actually attended and may be reimbursed for necessary meals, lodging, and travel expenses actually incurred while engaged on official business of the

board, at the same rates as provided for state officers and employees.

SECTION 2. AMENDMENT. Section 57-15-26.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-26.1. General tax levy of recreation service districts. The board of recreation service district commissioners of a recreation service district created under chapter 11-28.2 may, upon resolution of the board, levy a tax for general purposes in addition to all other levies permitted by law, not exceeding ~~one mill~~ twenty-five mills on the taxable valuation of property in the district. A resolution of the board of recreation service district commissioners may not increase a tax levy under this section from the amount levied in the previous taxable year unless approved by a majority of the qualified voters, as defined in section 11-28.2-03, present and voting on the question at the annual meeting of the recreation service district.

Disapproved March 26, 1987
Filed April 15, 1987

INITIATED MEASURES, DISAPPROVED

CHAPTER 770

SUNDAY GROCERY EMPLOYEE NUMBER

An initiated measure for the amendment of section 12.1-30-03 of the North Dakota Century Code, relating to the number of employees engaged in operating a business on Sunday.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

12.1-30-03. Businesses allowed to operate on Sunday - Limitations. Subject to the limitations of this section and section 12.1-30-02, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this section to operate on Sunday include:

1. Restaurants, cafeterias, or other prepared food service organizations.
2. Hotels, motels, and other lodging facilities.
3. Hospitals and nursing homes, including the sale of giftware on the premises.
4. Dispensaries of drugs and medicines.
5. Ambulance and burial services.
6. Generation and distribution of electric power, water, steam, natural gas, oil, or other fuel used as a necessary utility.
7. Distribution of gas, oil, and other fuels.
8. Telephone, telegraph, and messenger services.
9. Heating, refrigeration, and cooling services.
10. Railroad, bus, trolley, subway, taxi, and limousine services.

11. Water, air, and land transportation services and attendant facilities.
12. Cold storage warehouse.
13. Ice manufacturing and distribution facilities and services.
14. Minimal maintenance of equipment and machinery.
15. Plant and industrial protection services.
16. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
17. Newspaper publication and distribution.
18. Newsstands.
19. Radio and television broadcasting.
20. Motion picture, theatrical, and musical performances.
21. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:
 - a. Air conditioning system.
 - b. Batteries.
 - c. Electrical system.
 - d. Engine cooling system.
 - e. Exhaust system.
 - f. Fuel system.
 - g. Tires and tubes.
 - h. Emergency work necessary for the safe and lawful operation of the motor vehicle.
22. Athletic and sporting events.
23. Parks, beaches, and recreational facilities.
24. Scenic, historic, and tourist attractions.
25. Amusement centers, fairs, zoos, and museums.
26. Libraries.

27. Educational lectures, forums, and exhibits.
28. Service organizations (USO, YMCA, etc.).
29. Coin-operated laundry and drycleaning facilities.
30. Food stores operated by an owner or manager in addition to not more than ~~six~~ three employees working in the store at one time on a Sunday.
31. Bait shops for the sale of live bait and fishing tackle.
32. From April first through June fifteenth, floral nurseries for the sale of bedding plants and nursery stock.
33. From November twentieth through December twenty-fourth, Christmas tree stands.
34. Hobby shows, craft shows, fairs, exhibits.
35. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required.
36. Community festivals licensed or authorized by the governing body of a city or the board of county commissioners.
37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in sections 5-02-05 and 5-02-05.1.

Disapproved June 10, 1986

57,903 to 67,544

NOTE: This was measure No. 4 on the primary election ballot.

CHAPTER 771

STATE LOTTERY

An initiated measure for the amendment of Section 25 of Article XI of the Constitution of North Dakota, relating to a state-operated lottery.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

Section 25. The legislative assembly shall establish a state operated lottery for the purpose of providing tax relief for the citizens of North Dakota in such a manner that sales to the public of the lottery shall commence no later than December 1, 1987. The legislative assembly shall also establish a North Dakota gaming regulatory commission which shall administer and regulate the state lottery and any other charitable gaming permitted by law.

With the exception of a state lottery, the legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever. However, the legislative assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses.

The commission may authorize the use of any type of lottery game or games which will maximize the revenue objectives of the lottery consonant with the public good. Each lottery game shall consist of a procedure whereby prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares which provide the chance or other opportunity to win such prizes. The commission may enter into agreements, with any number of other states which have a state-operated or authorized lottery, to jointly operate a lottery game or games if it concludes that the lottery's net revenues to North Dakota will be enhanced by that action.

No prize shall be paid to, and no ticket or share in a lottery game shall be sold to or purchased by, anyone under the age of 18 years.

No Commissioner, employee of the lottery, or supplier to the lottery shall have been convicted of a felony; been determined to have engaged in embezzlement, fraud, or illegal gambling; been convicted of an offense involving a lottery drawing or procurement for any government-operated lottery; or been involved in such other violations as shall be specified by the legislative assembly by statute.

General fund monies cannot be used for funding the North Dakota gaming regulatory commission. Except for moneys necessary to temporarily fund the start up of the commission and the state lottery, the commission and the state lottery shall operate as a self-supporting, revenue-raising, and regulatory agency of state government. The legislative assembly shall establish a special fund for the administration and operation of the commission. This law must provide sufficient revenue to establish, administrate, and operate the North Dakota gaming regulatory commission, and must include, at a minimum, an amount equal to fifteen percent of the gross sales received from the lottery and a tax of one percent of the gross proceeds of charitable gaming. The funds so derived must be appropriated for and may be used solely by that commission, as directed by the legislature. However, the legislative assembly may provide an initial operating loan to the North Dakota gaming regulatory commission, which loan must be repaid within two (2) years.

In addition, an amount equal to five percent of the gross sales of the lottery shall be appropriated as a fee to lottery vendors.

The state lottery shall pay all prizes and all of its expenses out of the revenue it receives from the sale of tickets or shares to the public and must turn over the net proceeds to a fund to be established by the legislative assembly from which the legislative assembly shall make appropriations for the purpose of providing tax relief for the citizens of North Dakota.

Disapproved November 4, 1986

127,136 to 156,777

NOTE: This was measure No. 3 on the general election ballot.

CHAPTER 772

SUNDAY NOON BUSINESS OPENINGS

An initiated measure to create and enact section 12.1-30-04 of the North Dakota Century Code, relating to an employee day of rest; and to amend sections 12.1-30-01 and 12.1-30-02 of the North Dakota Century Code, relating to businesses which may operate on Sunday.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

12.1-30-01. Business or labor on Sunday - Exemptions - Classification of offenses.

1. Except as otherwise provided in sections 12.1-30-02 and 12.1-30-03, it is a class B misdemeanor for any person between the hours of twelve midnight and twelve noon on Sunday to do any of the following activities:
 - a. Engage in or conduct business or labor for profit in the usual manner and location.
 - b. Operate a place of business open to the public.
 - c. Authorize or direct that person's employees or agents to take action prohibited under this section.
2. The prohibition in subsection 1 does not apply to a person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath.
3. The attorney general, a state's attorney, a mayor, a city manager, or a city attorney may petition a district court, for the district where a violation is occurring, to enjoin a violation of this section.

12.1-30-02. Items prohibited from sale or rental on Sunday.

- a. Except for items sold at hobby shows, craft shows, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items between the hours of twelve midnight and twelve noon on Sunday is prohibited:
1. Clothing other than work gloves and infant supplies.
 2. Clothing accessories.
 3. Wearing apparel other than that sold to a transient traveler under emergency conditions.
 4. Footwear.
 5. Headwear.
 6. Home, business, office, or outdoor furniture.
 7. Kitchenware.
 8. Kitchen utensils.
 9. China.
 10. Home appliances.
 11. Stoves.
 12. Refrigerators.
 13. Air conditioners.
 14. Electric fans.
 15. Radios.
 16. Television sets.
 17. Washing machines.
 18. Dryers.
 19. Cameras.
 20. Hardware other than emergency plumbing, heating, cooling, or electrical repair or replacement parts and equipment.
 21. Tools other than manually driven hand tools.

22. Jewelry.
23. Precious or semiprecious stones.
24. Silverware.
25. Watches.
26. Clocks.
27. Luggage.
- ~~28-~~ ~~Meter vehicles other than the daily rental of vehicles by businesses whose sole activity is automobile rental-~~
- ~~29-~~ 28. Musical instruments.
- ~~30-~~ 29. The sale of aural or video recordings, records, or tapes. Rental of these items is permitted.
- ~~31-~~ 30. Toys other than those customarily sold as novelties or souvenirs.
- ~~32-~~ 31. Mattresses.
- ~~33-~~ 32. Bed coverings.
- ~~34-~~ 33. Household linens.
- ~~35-~~ 34. Floor coverings.
- ~~36-~~ 35. Lamps.
- ~~37-~~ 36. Draperies.
- ~~38-~~ 37. Blinds.
- ~~39-~~ 38. Curtains.
- ~~40-~~ 39. Mirrors.
- ~~41-~~ 40. Cloth piece goods.
- ~~42-~~ 41. Lawnmowers.
- ~~43-~~ 42. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted.
- ~~44-~~ 43. Paint and building and lumber supplies.
- b. Notwithstanding any other provisions of this chapter, the sale of motor vehicles on Sunday is prohibited.

12.1-30-04. One day of rest in seven.

1. a. An employer, whether a person, firm, partnership, or corporation, may not require an employee to work seven consecutive days in an establishment whose business is selling merchandise at retail. The employer may not deny the employee at least one period of twenty-four consecutive hours of time off for rest or worship in each seven-day period. This time off must be in addition to the regular periods of rest allowed during each day worked. The employer will accommodate the religious beliefs and practices of the employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of his business. In addition, the employer may not require the employee to work during a period that the employee requests to be off to attend one regular worship service a week of the employee's religion.
- b. This section does not apply to part-time employees whose total work hours for one employer is less than twenty hours during a calendar week.
2. An employer who violates this section commits a class B misdemeanor.
3. It is an affirmative defense to prosecution under this section that the employee volunteered for work on the seventh consecutive day and that the employee executed a written statement so stating. Such statement must also contain a provision, signed by the employer or his agent, that the employer did not require such work.

Disapproved November 4, 1986

115,422 to 172,577

NOTE: This was measure no. 4 on the general election ballot.

REFERRED MEASURE, APPROVED

CHAPTER 773

INCOME TAX INCREASE AND WITHHOLDING

Approval by referendum of House Bill No. 1901 of the Fiftieth Legislative Assembly which provided an increase in the North Dakota individual income tax rate for long-form and short-form filing. House Bill No. 1901 also requires the withholding of state income taxes from employee's wages and the filing of a declaration of estimated state income tax payments.

Approved March 18, 1987

62,635 to 59,340

NOTE: This was measure No. 2 on the special election ballot.

CONSTITUTIONAL AMENDMENTS, APPROVED

CHAPTER 774

STATE COAL MINERAL INTEREST EXCHANGES

House Concurrent Resolution No. 3024, chapter 709, 1985 Session Laws, proposed by the Forty-ninth Legislative Assembly of the State of North Dakota, amending section 6 of article IX of the Constitution of the State of North Dakota, relating to the exchange of state coal mineral interests with federal coal mineral interests.

STATEMENT OF INTENT

This amendment authorizes the board of university and school lands to exchange state coal mineral interests with coal mineral interests of the United States.

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

That the following proposed amendment to section 6 of article IX of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 6. No original grant school or institutional land shall be sold for less than the fair market value thereof, and in no case for less than ten dollars (\$10.00) per acre, provided that when lands have been sold on contract and the contract has been canceled, such lands may be resold without reappraisal by the board of appraisal. The purchaser shall pay twenty (20) percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six (6) percent of the original purchase price. An amount equal to not less than three (3) percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on purchase price. The purchaser may pay all or any

installment or installments not yet due to any interest paying date. If the purchaser so desires, he may pay the entire balance due on his contract with interest to date of payment at any time and he will then be entitled to proper conveyance.

All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, and notice of such sale shall be published once each week for a period of three weeks prior to the day of sale in a legal newspaper published nearest the land and in the newspaper designated for the publication of the official proceedings and legal notices within the county in which said land is situated.

No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of the contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, the contract of sale for such land shall, if the board of university and school lands so determine, by it, be declared null and void. No contract of sale heretofore made under the provisions of this section of the constitution as then providing shall be affected by this amendment, except prepayment of principal may be made as herein provided.

Any of said lands that may be required for townsite purposes, schoolhouse sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, airplane landing fields, fairgrounds, public highways, railroad right of way, or other railroad uses and purposes, reservoirs for the storage of water for irrigation, irrigation canals, and ditches, drainage ditches, or for any of the purposes for which private lands may be taken under the right of eminent domain under the constitution and laws of this state, may be sold under the provisions of this article, and shall be paid for in full at the time of sale, or at any time thereafter as herein provided. Any of said lands and any other lands controlled by the board of university and school lands, including state coal mineral interests, may, with the approval of said board, be exchanged for lands and coal mineral interests of the United States, the state of North Dakota or any county or municipality thereof as the legislature may provide, and the lands so acquired shall be subject to the trust to which the lands exchanged therefor were subject, and the state shall reserve all mineral and water power rights in land so transferred, except coal mineral interests approved for exchange by the board of university and school lands under this section.

When any of said lands have been heretofore or may be hereafter sold on contract, and the purchaser or his heirs or assigns is unable to pay in full for the land purchased within twenty years after the date of purchase and such contract is in default and subject to being declared null and void as by law provided, the board of university and school lands may, after

declaring such contract null and void, resell the land described in such contract to such purchaser, his heirs or assigns, for the amount of the unpaid principal, together with interest thereon reckoned to the date of such resale at the rate of not less than three (3%) percent, but in no case shall the resale price be more than the original sale price; such contract of resale shall be upon the terms herein provided, provided this section shall be deemed self-executing insofar as the provisions for resale herein made are concerned.

Approved June 10, 1986

62,240 to 43,259

NOTE: This was measure No. 1 on the primary election ballot.

CHAPTER 775

**BOARD OF UNIVERSITY AND SCHOOL LANDS
MEMBERSHIP**

Senate Concurrent Resolution No. 4005, chapter 711, 1985 Session Laws, proposed by the Forty-ninth Legislative Assembly of the State of North Dakota, amending section 3 of article IX of the Constitution of the State of North Dakota, relating to membership of the board of university and school lands.

STATEMENT OF INTENT

This amendment replaces the state auditor with the state treasurer as a member of the board of university and school lands.

**BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed amendment to section 3 of article IX of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 3 of article IX of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 3. The superintendent of public instruction, governor, attorney general, secretary of state and state ~~auditor shall constitute treasurer~~ comprise a board of commissioners, ~~which shall to be denominated the "board of university and school lands"; and subject.~~ Subject to the provisions of this article and any law that may be passed by the legislative assembly, ~~said the board shall have~~ has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law.

Approved June 10, 1986

58,337 to 47,518

NOTE: This was measure No. 3 on the primary election ballot.

CHAPTER 776

GOVERNOR AND LT. GOVERNOR TERM OF OFFICE

Senate Concurrent Resolution No. 4021, chapter 712, 1985 Session Laws, proposed by the Forty-ninth Legislative Assembly of the State of North Dakota, amending section 1 of article V of the Constitution of the State of North Dakota, or in the alternative for the amendment of the new section to the new article V of the Constitution of the State of North Dakota as created by section 4 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, relating to the term of the governor and lieutenant governor.

STATEMENT OF INTENT

This amendment provides that the governor's and lieutenant governor's term of office would begin on December fifteenth following their election.

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

That the following proposed amendment to section 1 of article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, having been submitted to the voters, is not approved in the primary election held in 1986, or the following proposed amendment to the new section to the new article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003 is approved at the primary election, is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 1 of article V of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 1. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of four years beginning in the year ~~1965~~ 1988, and

until ~~his~~ a successor is elected and duly qualified. The term begins on December fifteenth following the governor's election.

SECTION 2. AMENDMENT. The new section to the new article V of the Constitution of the State of North Dakota as created by section 4 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, is hereby amended and reenacted to read as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and the lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

Approved November 4, 1986

171,766 to 93,220

NOTE: This was measure No. 1 on the general election ballot.

CHAPTER 777

TAX COMMISSIONER ON PARTY BALLOT

Senate Concurrent Resolution No. 4022, chapter 713, 1985 Session Laws, proposed by the Forty-ninth Legislative Assembly of the State of North Dakota, amending section 12 of article V of the Constitution of the State of North Dakota, relating to the requirement that the tax commissioner be elected on a no-party ballot, or in the alternative for the amendment of the new section to the new article V of the Constitution of the State of North Dakota as created by section 1 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, relating to the requirement that the tax commissioner be elected on a no-party ballot.

STATEMENT OF INTENT

This amendment would remove the requirement that the tax commissioner be elected on a no-party ballot.

**BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed amendment to section 12 of article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly, having been submitted to the voters, is not approved in the primary election held in 1986, or the following proposed amendment to the new section to the new article V of the Constitution of the State of North Dakota if House Concurrent Resolution No. 3003 is approved at the primary election, is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 12 of article V of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 12. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the

legislative assembly, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, an attorney general, a commissioner of agriculture and labor, and a tax commissioner, who shall have attained the age of twenty-five years and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government for the term of four years beginning with the year 1965, and until their successors are elected and duly qualified; but no person shall be eligible for the office of treasurer for more than two consecutive terms.

The tax commissioner shall be elected on a no-party ballot and he shall be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

The board of railroad commissioners shall hereafter be known as the public service commission and the members of the board of railroad commissioners as public service commissioners and the powers and duties now or hereafter granted to and conferred upon the board of railroad commissioners are hereby transferred to the public service commission.

The public service commissioners shall have the qualifications of state electors, have attained the age of twenty-five years, be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, hold office at the seat of government and until their successors are elected and duly qualified. As each of the three public service commissioners now holding office completes his term, his successor shall be elected for a term of six years.

The legislative assembly may by law provide for a department of labor, which, if provided for, shall be separate and distinct from the department of agriculture, and shall be administered by a public official who may be either elected or appointed, whichever the legislative assembly shall declare; and if such a department is established the commissioner of agriculture and labor provided for above shall become the commissioner of agriculture.

SECTION 2. AMENDMENT. The new section to the new article V of the Constitution of the State of North Dakota as created by section 1 of House Concurrent Resolution No. 3003, as approved by the forty-ninth legislative assembly and the voters at the primary election, is hereby amended and reenacted to read as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The tax commissioner must be elected on a no-party ballot and must be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a department of labor, the powers and duties of the officer administering that department must be prescribed by law.

Approved November 4, 1986

131,956 to 124,599

NOTE: This was measure No. 2 on the general election ballot.

CHAPTER 778

EFFECTIVE DATE OF TAX MEASURES

Senate Concurrent Resolution No. 4024, chapter 780, 1987 Session Laws, proposed by the Fiftieth Legislative Assembly of the State of North Dakota, amending section 13 of article IV of the Constitution of the State of North Dakota, relating to the effective date of appropriation measures for support and maintenance of state departments and institutions and tax measures that change tax rates.

STATEMENT OF INTENT

This amendment provides that appropriation measures for support and maintenance of state departments and institutions and tax measures that change tax rates are effective on the July first following passage unless otherwise provided in the measure.

**BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA,
THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed amendment to section 13 of article IV of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the next statewide election to be held in 1987 or 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article IV of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may

embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly takes effect on July first after its filing with the secretary of state or ninety days after its filing whichever comes later, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

Approved March 18, 1987

66,687 to 50,991

NOTE: This was measure No. 1 on the special election ballot.

CONSTITUTIONAL AMENDMENT, DISAPPROVED

CHAPTER 779

EXECUTIVE BRANCH ARTICLE CHANGES

House Concurrent Resolution No. 3003, chapter 710, 1985 Session Laws, proposed by the Forty-ninth Legislative Assembly of the State of North Dakota, to create a new article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; to repeal the present article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; and to provide an effective date.

STATEMENT OF INTENT

This measure creates a new executive branch article for the constitution that retains all the current elected state officials. The amendment provides for the election, qualification, and compensation of executive officials, for the powers and duties of the governor, and for gubernatorial succession. The amendment also repeals the present article V of the Constitution of the State of North Dakota, and provides that these changes will take effect on July 1, 1987.

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

That the following proposed creation of a new article V and the following proposed repeal of the present article V of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1986, in accordance with the provisions of section 45 of article IV of the Constitution of the State of North Dakota.

SECTION 1. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The tax commissioner must be elected on a no-party ballot and must be nominated and elected in the manner now provided for the nomination and election of the superintendent of public instruction.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a department of labor, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 2. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor nominated jointly with the candidate for governor. The joint candidates having the highest number of votes shall be declared elected, but if two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly at its next regular session shall in joint session choose one pair of such joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

SECTION 3. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state and must have been a resident of this state for the two years preceding election to office. The attorney general must be licensed to practice law in this state.

SECTION 4. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The

elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

SECTION 5. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The compensation of elected state officials must be as provided by law, but may not be diminished during the term for which they were elected.

SECTION 6. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The elected state officials and the chief executive officers of the principal departments shall hold office at the seat of government.

SECTION 7. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and to maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in section 10 of this resolution or as provided by law.

The governor may call special sessions of the legislative assembly.

The governor may require information in writing from all executive officials and officers concerning the performance of their respective duties.

The governor may grant reprieves, commutations, and pardons as provided by law. The governor may delegate this power as provided by law.

The governor may supervise business with the United States and other states.

SECTION 8. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office which is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

SECTION 9. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it shall become law.

The governor may veto a bill passed by the legislative assembly. The governor may disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items. Portions of the bill not vetoed shall become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, shall immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill shall become law.

While the legislative assembly is in session, a bill shall become law if the governor neither signs nor vetoes it within three days, Saturdays and Sundays excepted, after its delivery to the governor. If the legislative assembly is not in session, a bill shall become law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

SECTION 10. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Any governor of this state who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

SECTION 11. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The lieutenant governor shall serve as president of the senate, and may, if the senate is equally divided on a question, vote on procedural and substantive matters. If, during a vacancy in the office of governor, the lieutenant governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

SECTION 12. REPEAL. The present article V of the Constitution of the State of North Dakota is hereby repealed.

SECTION 13. EFFECTIVE DATE. The provisions of this resolution, if approved by the people, shall take effect on July 1, 1987.

Disapproved June 10, 1986

44,706 to 56,115

NOTE: This was measure No. 2 on the primary election ballot.

CONSTITUTIONAL AMENDMENTS, PROPOSED

CHAPTER 780

SENATE CONCURRENT RESOLUTION NO. 4024
(Senators Holmberg, Heigaard, Olson)
(Representatives Strinden, Mertens, Shaft)

APPROPRIATION AND TAX MEASURES

A concurrent resolution for the amendment of section 13 of article IV of the Constitution of the State of North Dakota, relating to the effective date of appropriation measures for support and maintenance of state departments and institutions and tax measures that change tax rates.

STATEMENT OF INTENT

This amendment provides that appropriation measures for support and maintenance of state departments and institutions and tax measures that change tax rates are effective on the July first following passage unless otherwise provided in the measure.

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

That the following proposed amendment to section 13 of article IV of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the next statewide election to be held in 1987 or 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article IV of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title;

but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly takes effect on July first after its filing with the secretary of state or ninety days after its filing whichever comes later, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

Filed February 9, 1987

NOTE: This was measure No. 1 on the special election ballot.

CHAPTER 781

SENATE CONCURRENT RESOLUTION NO. 4005
(Senator Holmberg)
(Representative Shaft)

REFERRED MEASURE CHANGES

A concurrent resolution for the amendment of section 8 of article III of the Constitution of the State of North Dakota, relating to the requirement that a measure approved by the electors may not be repealed or amended by the legislative assembly for seven years except by a two-thirds vote.

STATEMENT OF INTENT

An initiated or referred measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house. This amendment would remove that prohibition for referred measures.

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

That the following proposed amendment to section 8 of article III of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the first statewide special election held following the passage of this resolution or, if no special election is held prior to it, at the primary election to be held in 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 8 of article III of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 8. If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. A An initiated measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Filed April 7, 1987

NOTE: This will be measure No. 1 on the primary election ballot.

CHAPTER 782

HOUSE CONCURRENT RESOLUTION NO. 3029 (Kretschmar)

EXECUTIVE BRANCH ARTICLE

A concurrent resolution to create a new article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; to repeal the present article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election and qualification of executive officials, to the powers and duties of the governor, and to gubernatorial succession; and to provide an effective date.

STATEMENT OF INTENT

This measure creates a new executive branch article for the constitution that retains all the current elected state officials. The amendment provides for the election and qualification of executive officials, for the powers and duties of the governor, and for gubernatorial succession. The amendment also repeals the present article V of the Constitution of the State of North Dakota, and provides that these changes will take effect on July 1, 1989.

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

That the following proposed creation of a new article V and the following proposed repeal of the present article V of the Constitution of the State of North Dakota are agreed to and must be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1988, in accordance with section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The executive power is vested in a governor, who shall reside at the seat of government and shall hold office for the term of four

years beginning in the year 1992, and until a successor is elected and qualified. The term begins on December fifteenth following the governor's election.

SECTION 2. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 3. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor running jointly with the candidate for governor. The joint candidates having the highest number of votes must be declared elected, but if two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly at its next regular session shall in joint session choose one pair of such joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

SECTION 4. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state, must be at least twenty-five years of age on the day of the election, and must have been a resident of this state for the five years preceding election to office. To be eligible to hold the office of governor or lieutenant governor, a person must be at least thirty years old on the day of the election. The attorney general must be licensed to practice law in this state.

SECTION 5. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

SECTION 6. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The elected state officials and the chief executive officers of the principal departments shall hold office in the state capital.

SECTION 7. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and to maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in section 11 of this article.

The governor may call special sessions of the legislative assembly.

The governor shall present information on the condition of the state, together with any recommended legislation, to every session of the legislative assembly.

The governor shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state.

The governor may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

SECTION 8. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office that is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

SECTION 9. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If, by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days after its delivery to the governor. If the legislative assembly is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

SECTION 10. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Any governor of this state who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby,

or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

SECTION 11. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The lieutenant governor shall serve as president of the senate, and may, if the senate is equally divided on a question, vote on procedural and substantive matters. The lieutenant governor shall succeed to the office of governor when a vacancy occurs in the office of governor. If, during a vacancy in the office of governor, the lieutenant governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

SECTION 12. REPEAL. The present article V of the Constitution of the State of North Dakota is hereby repealed.

SECTION 13. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1989.

Filed April 14, 1987

NOTE: This will be measure No. 2 on the primary election ballot.

CHAPTER 783

HOUSE CONCURRENT RESOLUTION NO. 3034
(Mertens, Strinden)

TAX MEASURE REFERRAL

A concurrent resolution for the amendment of section 5 of article III of the Constitution of the State of North Dakota, relating to the placement on an election ballot and suspension of operations of a referred tax measure.

STATEMENT OF INTENT

This amendment would provide that submission of a petition to refer a tax measure would not suspend its operation until the referred tax measure has been voted upon and successfully referred by a vote of the electorate.

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

That the following proposed amendment to section 5 of article III of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the state of North Dakota at the general election to be held in 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article III of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 5. An initiative petition ~~shall~~ must be submitted not less than ninety days before the statewide election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures, tax measures, and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

Filed April 6, 1987

NOTE: This will be measure No. 1 on the general election ballot.

CHAPTER 784

HOUSE CONCURRENT RESOLUTION NO. 3044 (Kretschmar)

BOARD OF HIGHER EDUCATION

A concurrent resolution for the amendment of subsections 2 through 8 of section 6 of article VIII of the Constitution of the State of North Dakota, relating to the appointment of members to and the powers and duties of the state board of higher education.

STATEMENT OF INTENT

This amendment updates the language relating to the appointment of members to and the powers and duties of the state board of higher education and removes the prohibition against having more than one graduate from the same institution on the state board of higher education.

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

That the following proposed amendments to subsections 2 through 8 of section 6 of article VIII of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Subsections 2 through 8 of section 6 of article VIII of the Constitution of the State of North Dakota are hereby amended and reenacted to read as follows:

- 2. a. The state board of higher education shall consist of seven members, with staggered seven-year terms continuing as those terms currently exist, all of whom shall be qualified electors ~~and taxpayers~~ of the state, and who shall have resided in this state for not less than five years immediately preceding their appointment, ~~to be~~ appointed by the governor, ~~by and with the consent of and confirmed by~~ the senate, from a list of names selected as hereinafter provided.

There shall not be on said board more than one graduate of any one of the institutions under the jurisdiction of the state board of higher education at any one time. No person employed by any institution under the control of the board shall may serve as a member of the board, nor shall may any employee of any such institution be eligible for membership on the state board of higher education for a period of two years following the termination of his after employment.

On or before the first day of February, 1939, the The governor shall nominate members to the board of higher education from a list of three names for each position, selected by the unanimous action of the president of the North Dakota educational association, the chief justice of the supreme court, and the superintendent of public instruction, and, with the consent of a majority of the members-elect of the senate, shall appoint from such list as such state board of higher education seven members, whose terms. Terms shall commence on the first day of July, 1939, one of which terms and shall expire on the thirtieth day of June, 1940, and one on the thirtieth day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946. The term of office of members appointed to fill vacancies at the expiration of said terms shall be each member is for seven years, and in the case of vacancies otherwise arising, appointments shall may be made only for the balance of the term of the members whose places are to be filled.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate as hereinbefore provided, the governor shall again nominate a candidate for such the office, selected from a new list, prepared in the manner hereinbefore provided, which. The nomination shall must be submitted to the senate for confirmation, and said the proceedings shall must be continued until such all appointments have been confirmed by the senate, or the session of the legislature shall have legislative assembly has adjourned.
- c. When any term expires or a vacancy occurs when the legislature legislative assembly is not in session, the governor may appoint from a list selected as hereinbefore provided, a member who shall serve until the opening of the next session of the legislature legislative assembly, at which time his the appointment shall must be certified to the senate for confirmation, as above provided; and if the appointment be is not confirmed by the thirtieth legislative day of such the session, his the office

shall be is deemed vacant and the governor shall nominate from a list selected as hereinbefore provided, another candidate for such the office and the same proceedings shall must be followed as are above set forth; provided further, that when the legislature shall be legislative assembly is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate his a successor from a list selected as above set forth, within the first thirty days of such the session, and upon confirmation by the senate such the successor shall take office at the expiration of the term of the incumbent. No person who has been nominated and whose nomination the senate has failed to confirm, shall be is eligible for an interim appointment.

3. The members of the state board of higher education may only be removed by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings.
4. Each appointive member of the state board of higher education shall receive such compensation as may be determined by the legislative assembly for the time actually spent devoted to the duties of his office; and in addition, shall receive his necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of his office.
5. The legislature legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the state board of higher education.
6. a. The state board of higher education shall held its first meeting at the office of the state board of administration at Bismarck, on the 6th day of July, 1939, and shall organize and elect one of its members as president of such the board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the city of Bismarck, North Dakota. Said secretary shall to hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the board of administration in connection with the several institutions hereinbefore mentioned, and the said board of administration shall immediately upon the organization of said state board of higher education, surrender and transfer to said state board of higher education all

duties, rights, and powers granted to it under the existing laws of this state concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.

- b. The said state board of higher education shall have has full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. In furtherance of its powers, ~~the~~ The state board of higher education shall have has the power to delegate to its employees details of the administration of the institutions under its control. The said state board of higher education shall have has full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and to do each and everything necessary and proper for the efficient and economic administration of said state educational institutions of higher education.
- c. Said ~~The~~ board shall prescribe for all of said institutions of higher education standard systems of accounts and records and shall biennially, and within six ~~(6)~~ months immediately preceding the regular session of the legislature, legislative assembly make a report to the governor, covering in detail the operations of the educational institutions under its control.
- d. It shall be the duty of the heads of the several state institutions hereinbefore mentioned, of higher education to submit the budget requests for the biennial appropriations for said the institutions to said the state board of higher education, and said. The state board of higher education shall consider said the budgets and shall revise the same as in its judgment shall be for will serve the best interests of the educational system of the state, and thereafter the. The state board of higher education shall prepare and present to the state budget board governor and to the legislature legislative assembly a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a." The appropriations for all of said institutions of higher education shall be contained in one legislative measure, except as otherwise allowed by law. The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension

division of the North Dakota state university of agriculture and applied science may be separate from those of state educational institutions.

- e. The ~~said~~ state board of higher education ~~shall have~~ has the control of the expenditure of the funds belonging to, ~~and~~ allocated to ~~such institutions and~~ also these, or appropriated by the legislature, legislative assembly for the institutions of higher education in this state, ~~provided, however, except~~ that funds appropriated by the legislature legislative assembly and specifically designated for any one ~~or more of such institutions, shall~~ institution may not be used for any other institution.
7. a. The state board of higher education shall, ~~as seen as~~ practicable, appoint for a term of not to exceed three ~~(3)~~ years, a state commissioner of higher education, whose principal office ~~shall~~ must be at the state capitol, in the city of Bismarck. ~~Said~~ The commissioner of higher education ~~shall be~~ is responsible to the state board of higher education and ~~shall be~~ removable by ~~said~~ the board for cause.
- b. The state ~~emissioner~~ emissioner of higher education shall be a graduate of some reputable college or university, and ~~who~~ by training and experience is familiar with the ~~problems peculiar to higher education.~~
- e- Such commissioner of higher education shall be the chief executive officer of ~~said~~ the state board of higher education, and shall perform such duties as shall be prescribed by the board.
8. This constitutional provision ~~shall be~~ is self-executing and ~~shall become~~ is effective without the necessity of legislative action.

Filed April 6, 1987

NOTE: This will be measure No. 2 on the general election ballot.

CHAPTER 785

SENATE CONCURRENT RESOLUTION NO. 4047
(Wright, Richard, Moore, Kelsh)

FEDERAL LAND BANK TAXATION

A concurrent resolution for the amendment of section 5 of article X of the Constitution of the State of North Dakota, relating to taxation of property owned by the United States when Congress has waived exemption of the property to allow imposition of property taxes and state oil and gas taxes or other taxes imposed in lieu of property taxes on minerals or property owned by the federal land bank and relating to taxation of state or local government property if exemption of the property is waived by the legislative assembly.

STATEMENT OF INTENT

This amendment provides that property of the United States is subject to state and local property taxes if Congress has waived exemption of the property to allow imposition of property taxes and state oil and gas taxes or other taxes imposed in lieu of property taxes on minerals or property owned by the federal land bank and relating to taxation of state or local government property if exemption of the property is waived by the legislative assembly.

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

That the following proposed amendment to section 5 of article X of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the next general election to be held in 1987 or 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article X of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The ~~legislature~~ legislative assembly may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and

improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States and, to the extent immunity from taxation has not been waived by an act of Congress, property of the state, county, and municipal corporations, to the extent immunity from taxation has not been waived by an act of the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. Except as restricted by this article, the ~~legislature~~ legislative assembly may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

Filed April 14, 1987

NOTE: This will be measure No. 3 on the general election ballot.

HOUSE RESOLUTIONS

CHAPTER 786

HOUSE RESOLUTION NO. 1 (Strinden, Kloubec)

HAROLD SCHAFFER COMMENDED

A resolution commending Harold Schafer on his 75th birthday and congratulating him on his many achievements in business and community service.

WHEREAS, it is a custom of the Legislative Assembly to recognize and honor North Dakota citizens for their national accomplishments; and

WHEREAS, Harold Schafer was the recipient of the Theodore Roosevelt Roughrider Award in 1974, which is the highest recognition the state of North Dakota can bestow upon present or former North Dakotans, and he was also awarded the Theodore Roosevelt Association's Distinguished Service Medal; and

WHEREAS, Harold Schafer was, at 41, the youngest man ever to receive the Horatio Alger Award; and

WHEREAS, Harold Schafer's entrepreneurial odyssey began as a clothes salesman, progressed to glass and paint sales, and culminated in the founding of an international consumer product company; and

WHEREAS, the Gold Seal Company, founded 45 years ago, has supplied hundreds of thousands of households with such products as Glass Wax, Snowy Bleach, and Mr. Bubble, products which are known worldwide; and

WHEREAS, the success of Harold Schafer and the Gold Seal Company has been written about and lauded in national magazines and newspapers; and

WHEREAS, Harold Schafer's commitment to the restoration of Medora has resulted in making Medora one of the great tourist attractions of the Great Plains region, drawing hundreds of thousands of tourists from all across this nation each year; and

WHEREAS, Harold Schafer's unstinting commitment to hard work and achievement in the field of business is equally matched by his

involvement in many philanthropic organizations, his total commitment to the state of North Dakota, and his faith in the virtues of North Dakota's people;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That the House of Representatives extends its warmest congratulations to Harold Schafer on his 75th birthday and commends him on his many stellar accomplishments in the field of business and his unflagging dedication to this state and its cherished institutions; and

BE IT FURTHER RESOLVED, that the Secretary of State send enrolled copies of this resolution to Harold and Sheila Schafer and their children.

Filed February 4, 1987

CHAPTER 787

HOUSE RESOLUTION NO. 2
(V. Olson, Gerntholz)
(Approved by the Committee on Delayed Bills)

SUND-VALLEY CITY VIKINGS BASKETBALL

A resolution congratulating and recognizing the State University of North Dakota - Valley City Vikings basketball team on its outstanding 1986-87 basketball season and for winning placement in the NAIA national basketball tournament.

WHEREAS, the State University of North Dakota - Valley City Vikings basketball team achieved a season record of 23 wins and five losses, the best record in NAIA District 12 basketball; and

WHEREAS, the Vikings were North Dakota College Athletic Conference regular season champions and North Dakota College Athletic Conference playoff champions during the current season and the Vikings achieved victories over Carroll College and Huron College in NAIA District 12 basketball playoffs; and

WHEREAS, having achieved national recognition by winning placement in the NAIA national basketball tournament, the Vikings have brought recognition to the high quality activities programs carried on at North Dakota institutions of higher education; and

WHEREAS, on Thursday, March 12, 1987, the Vikings will oppose the University of Wisconsin - Eau Claire in the first round of the NAIA national basketball tournament at Kansas City, Missouri;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That the House of Representatives of the State of North Dakota extends its sincere and hearty congratulations to the State University of North Dakota - Valley City Vikings basketball team on its outstanding season and wishes the Vikings the greatest success in the NAIA national basketball tournament; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the president of the State University of North Dakota - Valley City, each member of the Vikings basketball team, and their coach, Bob Parker.

Filed March 16, 1987

CHAPTER 788

HOUSE RESOLUTION NO. 3
(Mertens, G. Berg)

(Approved by the Committee on Delayed Bills)

DEVILS LAKE LADY ROYALS BASKETBALL

A resolution congratulating and recognizing the North Dakota State College of Science-Devils Lake Lady Royals basketball team on its outstanding 1986-87 basketball season and for winning a berth in the NJCAA national basketball tournament.

WHEREAS, the North Dakota State College of Science-Devils Lake Lady Royals basketball team achieved a season record of 29 wins and six losses; and

WHEREAS, the Lady Royals recently won the championship of the NJCAA Region 13 tournament at Crookston, Minnesota; and

WHEREAS, this is the third consecutive season and the fourth of the last five seasons in which the Lady Royals have earned a berth in the NJCAA national basketball tournament and this continuing excellence of the Lady Royal's basketball program has brought recognition to the high quality activities programs carried on at North Dakota institutions of higher education; and

WHEREAS, on Tuesday, March 17, 1987, the Lady Royals will oppose the Utah Technical Institute in the first round of the NJCAA national basketball tournament at Senatobia, Mississippi;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That the House of Representatives of the state of North Dakota extends its sincere and hearty congratulations to the North Dakota State College of Science-Devils Lake Lady Royals basketball team on its outstanding recent seasons and wishes the Lady Royals the greatest success in the NJCAA national basketball tournament; and

BE IT FURTHER RESOLVED, that the Chief Clerk of the House send a copy of this resolution to the president of the North Dakota State College of Science-Devils Lake, each member of the Lady Royals basketball team, and their coach, Gene Roebuck.

Filed March 16, 1987

CHAPTER 789

HOUSE RESOLUTION NO. 4
(Hoffner, Klundt, Starke)
(Approved by the Committee on Delayed Bills)

STATE SPELLING BEE CHAMPION

A resolution congratulating Kamille Bachmeier on winning the state spelling bee.

WHEREAS, Kamille Bachmeier won the state spelling bee on April 9, 1987, by correctly spelling the word "mugwumpery"; and

WHEREAS, Kamille Bachmeier competed against two representatives from each of the state's 53 counties in the written competition to become one of 29 finalists; and

WHEREAS, Kamille Bachmeier competed against the other 28 finalists in the oral competition to win the state championship; and

WHEREAS, Kamille Bachmeier, because she won the state championship, will advance to the national spelling bee in Washington, D.C., in May;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That the House of Representatives of the state of North Dakota extends its sincere and hearty congratulations to Kamille Bachmeier of Esmond, North Dakota, for winning the state spelling bee; and

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives forward a copy of this resolution to Kamille Bachmeier.

Filed April 17, 1987

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 790

HOUSE CONCURRENT RESOLUTION NO. 3001
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE AGENCIES PRACTICE ACT STUDY

A concurrent resolution directing the Legislative Council to study the Administrative Agencies Practice Act.

WHEREAS, North Dakota was the first state in the Union to adopt an administrative procedure act when it adopted the Administrative Agencies Practice Act in 1941; and

WHEREAS, the Administrative Agencies Practice Act provides rulemaking procedures, administrative agency hearing procedures, and methods of appealing administrative agency decisions; and

WHEREAS, it is the purpose of the Administrative Agencies Practice Act to standardize procedures for all administrative agencies; and

WHEREAS, there are 24 state agencies or parts thereof not subject to and not required to follow the procedures of the Act; and

WHEREAS, in the last 20 years social changes have greatly altered the functions of administrative agencies including regulation of the environment, welfare programs, and public safety; and

WHEREAS, the present provisions do not clearly define the parties to the proceedings or provide for alternative types of hearings depending on the circumstances; and

WHEREAS, the present provisions do not detail procedures to be used in prehearing conferences or in the hearing itself; and

WHEREAS, it is unclear whether emergency rules become effective upon approval by the Attorney General or receipt of the rules by the Legislative Council for publication in the Administrative Code; and

WHEREAS, the Administrative Agencies Practice Act does not specify the agency responsible for filing rules with the Legislative Council for publication in the Administrative Code; and

WHEREAS, with the increase in the number and duties of administrative agencies, the procedural hearing requirements contained in the Administrative Agencies Practice Act may no longer be adequate; and

WHEREAS, the Department of Human Services is required by subsection 21 of section 50-06-05.1 of the North Dakota Century Code to provide claimants an independent administrative hearing officer in the Attorney General's office upon request for certain hearings and it may be appropriate for other state administrative agencies to require independent hearing officers under certain circumstances; and

WHEREAS, certain efficiencies and fairness may be accomplished by establishing an independent hearings officer branch in state government;

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

That the Legislative Council is directed to conduct a study of the Administrative Agencies Practice Act, North Dakota Century Code Chapter 28-32, to include consideration of the agencies subject to the Act, the agencies not subject to the Act, the various rulemaking procedures under current law, any public hearing requirements, the procedures and practices prior to and after such hearings, the appeals available, the feasibility and desirability of establishing a separate administrative hearings officer branch, the feasibility and desirability of standardizing administrative rulemaking authority, and the extent administrative agency rules should be published in the North Dakota Administrative Code; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 791

HOUSE CONCURRENT RESOLUTION NO. 3002
(Legislative Council)
(Interim Court Services Committee)

MUNICIPAL ORDINANCES STUDY

A concurrent resolution directing the Legislative Council to study methods for providing and maintaining model municipal ordinances for the protection of small North Dakota cities.

WHEREAS, municipal court judges may be subject to lawsuits and held liable for the award of attorneys' fees in lawsuits regarding their actions taken as municipal court judges in the enforcement of municipal ordinances; and

WHEREAS, many North Dakota cities are experiencing increasing difficulty in obtaining adequate insurance coverage for the acts of their officials, including municipal court judges; and

WHEREAS, there is a need to assist cities in the development and maintenance of model municipal ordinances; and

WHEREAS, there is a need to assure that municipal ordinances are kept up to date to meet the needs of North Dakota cities; and

WHEREAS, it may be necessary for the Legislative Assembly to enact model municipal ordinances for cities to adopt; and

WHEREAS, smaller cities and larger cities have different needs with regard to their municipal ordinances and smaller cities in general may require more assistance in developing and maintaining such ordinances;

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

That the Legislative Council study methods for providing and maintaining model municipal ordinances for the protection of small North Dakota cities; 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-first Legislative Assembly.

Filed March 17, 1987

CHAPTER 792

HOUSE CONCURRENT RESOLUTION NO. 3003 (Legislative Council) (Interim Indian Jurisdiction Committee)

PAYMENTS IN LIEU OF TAXES

A concurrent resolution urging the Congress of the United States to make full payments in lieu of real property taxes on all land withdrawn, held in trust, or purchased for federal purposes.

WHEREAS, local governments in North Dakota depend heavily on their tax base in real property as a means of maintaining adequate fiscal management; and

WHEREAS, lands held in trust or owned by the federal government are generally exempt from real property taxation; and

WHEREAS, in those cases where the federal government makes payments in lieu of real property taxes, the payments are generally far below the moneys that would be received from privately owned land; and

WHEREAS, the removal or purchase of land for federal purposes and the existence of lands held in trust causes an adverse economic effect on local government at all levels;

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

That the Congress of the United States is urged to enact legislation requiring the federal government to make payments in lieu of taxes on all land withdrawn, held in trust, or purchased for federal purposes to replace real property tax revenue foregone by local governments; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the presiding officers of the United States House of Representatives and the United States Senate and to each member of the North Dakota Congressional Delegation.

Filed March 31, 1987

CHAPTER 793

HOUSE CONCURRENT RESOLUTION NO. 3004 (Legislative Council) (Interim Indian Jurisdiction Committee)

PRESIDENTIAL INDIAN STUDY COMMISSION

A concurrent resolution urging the President of the United States to establish a presidential commission to study the impact of federal Indian policies on non-Indians living or working on or near Indian reservations in the United States.

WHEREAS, the establishment and governance of the several Indian reservations within the state of North Dakota and other states have resulted from treaties and other acts of the United States government; and

WHEREAS, the various relationships among state, tribal, local, and federal governmental units are both unique and often ill-defined and are extraordinary to the normal relationships envisioned by the framers of our federal system; and

WHEREAS, the solutions to problems regarding the authority of state, tribal, local, and federal governments to exercise governmental powers as they might apply to Indian and non-Indian persons living within reservation boundaries are not readily apparent; and

WHEREAS, tribal governments have purported to extend their jurisdiction to all persons and lands within the boundaries of Indian reservations, including non-Indians and land that is not owned by an Indian or an Indian tribe; and

WHEREAS, the uncertainties of this jurisdictional morass raise substantial questions concerning the availability of full constitutional guarantees to non-Indian citizens residing within reservation boundaries; and

WHEREAS, tribal members are entitled to certain privileges and protections in addition to the privileges and protections of other United States citizens which tends to establish various classes of citizenship with attendant differences in the rights and obligations of these classes of individuals in important areas such as taxation; and

WHEREAS, free and orderly commerce and economic development on reservations is endangered by a lack of certainty in the application of state and federal laws and regulations relative to banking, and other commercial transactions, liquor and gambling control, and other aspects of commerce; and

WHEREAS, these undesirable conditions are largely a result of acts of the United States government, and the state of North Dakota is virtually powerless to achieve their fundamental resolution;

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

That the President of the United States is urged to establish a presidential commission to study the impact of federal Indian policies on non-Indians living or working on or near Indian reservations in the United States and to report the results of its study and its recommendations to the President, the Congress of the United States, and the Secretary of the Interior; and

BE IT FURTHER RESOLVED, that the President is urged to authorize such a commission, in carrying out its responsibilities, to conduct hearings and interviews at sites across the nation and to confer with state, local, tribal, and other government officials, private sector business people, private property owners, and other organizations and individuals affected by matters pertaining to the commission's study; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the United States House of Representatives and United States Senate, each member of the North Dakota Congressional Delegation, the Secretary of the Interior, and the governors and legislative bodies of the states of Arizona, California, Idaho, Minnesota, Montana, New Mexico, Oregon, South Dakota, Washington, Wisconsin, and Wyoming.

Filed March 18, 1987

CHAPTER 794

HOUSE CONCURRENT RESOLUTION NO. 3005 (Legislative Council) (Interim Jobs Development Commission)

JOBS DEVELOPMENT COMMISSION STUDY

A concurrent resolution directing the Legislative Council to establish a Jobs Development Commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain new economic development and to stimulate the creation of new employment opportunities for the citizens of this state.

WHEREAS, the Forty-ninth Legislative Assembly through adoption of Senate Concurrent Resolution No. 4047 directed the Legislative Council to form a Jobs Development Commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain new economic development in the state of North Dakota; and

WHEREAS, the interim Jobs Development Commission held several meetings and heard testimony from individuals and representatives of state departments, institutions, and agencies and private businesses and organizations concerned about the state's economic climate, and received recommendations on various topics including capital formation, taxation, tourism, state economic development programs, university-based research and development projects, and energy development; and

WHEREAS, there is now an even greater need, because of low farm commodity and energy prices, for the state of North Dakota to strengthen and diversify its economic base through a concerted effort to retain, strengthen, and expand existing business and industry and to nurture the startup and growth of new business and industry in this state; and

WHEREAS, the formation of a Jobs Development Commission would provide a necessary focal point for individuals and state and private economic development agencies and organizations to develop and execute policies and plans for state economic development;

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

That the Legislative Council form a Jobs Development Commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain new economic development in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to apply for, contract for, receive, and expend for its purposes, as provided in the North Dakota Century Code Section 54-35-06, any appropriations or grants from the state or its political subdivisions, federal government, or any other public or private source; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 795

HOUSE CONCURRENT RESOLUTION NO. 3006
(Legislative Council)
(Interim Judiciary Committee)

INSURANCE INDUSTRY STUDY

A concurrent resolution directing the Legislative Council to study the insurance industry.

WHEREAS, Americans constitute approximately five percent of the world's population but purchases of insurance by Americans account for approximately 44 percent of the total world insurance premiums; and

WHEREAS, it appears Americans view insurance as a necessity, not a luxury, and have come to rely upon it in all facets of their lives; and

WHEREAS, there is currently an insurance affordability and availability crisis affecting a wide range of public and private sector entities and individuals; and

WHEREAS, the reasons given for the crisis have varied from the insurers' complaints about the civil justice system to other complaints about the insurance companies' relying on investment income to provide profits in the late 1970s and early 1980s rather than charging adequate premiums to cover losses and guarantee profits; and

WHEREAS, the regulation of the insurance industry is principally the responsibility of the states under the federal McCarran Act of 1945; and

WHEREAS, 41 states passed some type of legislation in 1986 to address this crisis;

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

That the Legislative Council study the insurance industry in depth, with particular attention to the role of the state in providing regulation of the industry designed to avert any future crisis such as is presently occurring; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 796

HOUSE CONCURRENT RESOLUTION NO. 3007
(Representatives G. Berg, Mertens, Strinden)
(Senators Heigaard, Olson)

DEVILS LAKE RESTORATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of restoring Devils Lake through alternate sources of water.

WHEREAS, the Garrison Diversion Unit Commission recommended that the Lonetree Reservoir not be completed; and

WHEREAS, the Garrison Diversion Unit Reformulation Act of 1986 provides that the Sykeston Canal is to be constructed as a replacement for the Lonetree Reservoir; and

WHEREAS, water from the Lonetree Reservoir would have provided a source of water into Devils Lake and the Devils Lake system which would have stabilized the lakes, freshened their water from their present saline conditions, and provided valuable recreation opportunity and fish and wildlife enhancement; and

WHEREAS, one alternate source of water available to restore Devils Lake and the Devils Lake chain would be created by draining the thousands of acres of lake bottoms and potholes north of Devils Lake; and

WHEREAS, North Dakota's drainage laws may prohibit the draining of these lake bottoms and potholes; and

WHEREAS, it may be desirable to construct an outlet from and an inlet into Devils Lake to enable alternate sources of water to flow through the Devils Lake system, thus ensuring the maintenance of quality and quantity of water;

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

That the Legislative Council study the feasibility and desirability of restoring Devils Lake and the Devils Lake system through alternate sources of water; 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-first Legislative Assembly.

Filed April 10, 1987

CHAPTER 797

HOUSE CONCURRENT RESOLUTION NO. 3008 (Ulmer)

COMMUNITY-BASED CARE STUDY

A concurrent resolution directing the Legislative Council to study the system of community-based care provided by the Department of Human Services for the developmentally disabled, chronically mentally ill, aged and infirm, and other persons, including the process of reimbursement for providers of such services and the availability of community-based settings.

WHEREAS, the Department of Human Services is authorized by law to purchase residential care, custody, treatment, training, and education for developmentally disabled persons in licensed treatment or care centers in the state; and

WHEREAS, there presently exists confusion regarding reimbursement for providers of services to developmentally disabled persons; and

WHEREAS, the issue of provider reimbursement extends not only to services for the developmentally disabled but also to services for the aged and infirm, chronically mentally ill, and other persons who are provided human services purchased by the state under a reimbursement system; and

WHEREAS, the administration of community-based care as provided or purchased by the state varies widely according to the type of services provided and persons served; and

WHEREAS, the accessibility of client referrals to service providers and facilities is necessary in order to provide services in the least restrictive appropriate setting;

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

That the Legislative Council study the overall system of community-based care provided by the Department of Human Services for the developmentally disabled, chronically mentally ill, aged and infirm, and other persons, including the process of reimbursement for providers of community-based care and the availability of community-based settings; 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-first Legislative Assembly.

CHAPTER 798

HOUSE CONCURRENT RESOLUTION NO. 3010
(Representatives Wald, Knudson, Dotzenrod)
(Senators Waldera, Langley)

STATE BIDDING STUDY

A concurrent resolution directing the Legislative Council to study the need for consolidation and revision of state bidding and bid preference laws relating to public contracts.

WHEREAS, contracts to perform services for or provide supplies and materials to the state and its political subdivisions are generally let through a bidding process subject to laws relating to bid requirements and procedures, and employment, service, and material preferences; and

WHEREAS, bidding and bid preference laws are scattered throughout the North Dakota Century Code, making it difficult to locate provisions applicable to certain public contracts; and

WHEREAS, many of the bidding and bid preference laws could be arranged and consolidated in the North Dakota Century Code to reflect a more logical location and arrangement; and

WHEREAS, the intended application of many bidding and bid preference laws is unclear due to archaic or ambiguous language that may result in unfair or inconsistent bidding practices or misunderstanding by the parties involved in the public contract process;

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

That the Legislative Council is directed to study the feasibility and desirability of consolidating and revising state bidding and bid preference laws relating to public contracts, including if necessary substantive recommendations or changes; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 799

HOUSE CONCURRENT RESOLUTION NO. 3012 (Kretschmar)

POLITICAL SUBDIVISION DECISION APPEALS STUDY

A concurrent resolution directing the Legislative Council to study procedures and standards in appeals for court review of decisions of county commissioners and other local governing bodies.

WHEREAS, many statutes allow appeals to the courts from decisions of local governing bodies, such as appeals from decisions of county commissioners, from any order or decision of the board of an irrigation district, from some decisions of municipal governing bodies, from township zoning decisions, from water resource board decisions, as well as from other actions of local governing bodies; and

WHEREAS, substantial uncertainty exists for those local governing boards, the litigants, and the courts regarding the records, procedures, and standards for court review of the decisions of county commissioners and other local governing bodies; and

WHEREAS, there is a serious problem in the usual lack of available records for adequate court review of decisions of local governing bodies, as illustrated by the decision in Shaw v. Burleigh County, 286 N.W.2d 792 (N.D. 1979); and

WHEREAS, the North Dakota judicial system has studied the problem of procedures for court appeals from decisions of local governing bodies, but doubts remain as to the appropriateness of the judicial branch imposing new duties of recordkeeping on local governments, as well as in creating standards for review of decisions of local governments which are often only local legislative decisions; and

WHEREAS, the Legislative Assembly should resolve the issues involved in judicial review of decisions of local governing bodies;

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

That the Legislative Council is directed to study the adequacy of the present procedures and standards for appeals for judicial review of decisions of county commissioners and other local governing boards, with emphasis on methods to improve those procedures and standards; 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-first Legislative Assembly.

Filed March 17, 1987

CHAPTER 800

HOUSE CONCURRENT RESOLUTION NO. 3015 (Mertens)

SCHOOL DISTRICT ADMINISTRATION STUDY

A concurrent resolution directing the Legislative Council to study the administrative structure of school districts providing elementary and secondary education in this state and other states.

WHEREAS, it is the responsibility of the Legislative Assembly to ensure the wisest and most efficient use of the state's resources; and

WHEREAS, there are 313 local school districts in this state; and

WHEREAS, each school district is managed by an elected board of five to nine members; and

WHEREAS, of the 313 districts, 227 are operating classes from kindergarten through high school; 48 are providing graded elementary education having two or more teachers; 12 are offering one-room, one-teacher schools; and 26 districts are not operating but pay tuition for their students to attend schools outside of their districts; and

WHEREAS, Florida, Colorado, and Hawaii are examples of states where each county, region, or the entire state constitutes a school district for the control, organization, and administration of the schools in that district; and

WHEREAS, it may be more efficient and effective to reorganize the administrative structure of school districts within this state; and

WHEREAS, reorganization of school districts may improve the public schools of this state by equalizing the benefits and burdens of education throughout the various counties and communities, by more efficiently and effectively providing for the maintenance of a thorough and uniform system of free public schools, and by making possible a higher degree of uniformity of school tax rates among school districts;

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

That the Legislative Council study the administrative structure of school districts in this state and review the administrative structure of elementary and secondary school districts in other states; 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-first Legislative Assembly.

Filed March 11, 1987

CHAPTER 801

HOUSE CONCURRENT RESOLUTION NO. 3016 (Shaft)

CENTENNIAL BAND

A concurrent resolution urging the creation of a state centennial band.

WHEREAS, North Dakota is nearing its 100th anniversary as a state and, in celebration, centennial events are being planned throughout the state; and

WHEREAS, a band representing the state centennial and providing entertainment at events throughout the state would be a valuable and pleasurable addition to the centennial celebration; and

WHEREAS, the band would be supported solely by private donations and membership would be comprised of one member selected from each school district that has a band; and

WHEREAS, selection and participation in centennial events as a member of this state centennial band would provide young people throughout this state with a unique opportunity to take part in this historic occasion;

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

That the Fiftieth Legislative Assembly urges the creation of a state centennial band to provide rousing entertainment at centennial events throughout the state; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Executive Director of the Centennial Commission and a copy to the Superintendent of Public Instruction for distribution to the school districts.

Filed March 19, 1987

CHAPTER 802

HOUSE CONCURRENT RESOLUTION NO. 3017 (Representative Winkelman) (Senator Kelsh)

LEGISLATIVE PHOTOGRAPHER

A concurrent resolution to appoint an official photographer for the Fiftieth Legislative Assembly, to set forth the photography order, and to authorize payment.

WHEREAS, for historical purposes it has been the custom of all North Dakota Legislative Assemblies to have composite group pictures made for all members of such assemblies; and

WHEREAS, Larry Weller Photography offers to take five color proof photographs of each Senator, each Representative, the Lieutenant Governor, the Secretary of the Senate, the Assistant Secretary of the Senate, the Senate Desk Reporter, the Senate Sergeant-at-Arms, the Senate Bill Clerk, the Chief Clerk of the House, the Assistant Chief Clerk of the House, the House Desk Reporter, the House Sergeant-at-Arms, and the House Bill Clerk, to retouch the final prints, and to compile a composite color picture of all Senate members and the Lieutenant Governor and named employees, and all House members and named employees, framed and ready to hang, and individual composite photographs to be furnished to each member; all the foregoing at a total cost of \$2,190;

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

That Larry Weller Photography of Mandan, North Dakota, be and is hereby appointed official photographer for the Fiftieth Legislative Assembly of the state of North Dakota; and

BE IT FURTHER RESOLVED, that Larry Weller Photography of Mandan, North Dakota, is hereby awarded the sole privilege of photographing members of the Senate and the House of Representatives, the Lieutenant Governor, and the above-named legislative employees of the Fiftieth Legislative Assembly, at the total cost of \$2,190 to be charged as a legislative expense; and

BE IT FURTHER RESOLVED, that the photographs shall be delivered pursuant to a contract entered into between Larry Weller Photography and the photography committees of the House of Representatives and the Senate.

Filed January 28, 1987

CHAPTER 803

HOUSE CONCURRENT RESOLUTION NO. 3018 (Mertens)

APPROPRIATIONS COMMITTEE STUDY

A concurrent resolution directing the Legislative Council to study and determine alternatives to improve the committee structure for the appropriation process.

WHEREAS, the workload of the Appropriations Committees is increasing every session; and

WHEREAS, other states have established Budget Committees with other standing committees recommending appropriations; and

WHEREAS, members of the Legislative Assembly serving on other standing committees have expertise to strengthen the Legislative Assembly's role in making appropriations; and

WHEREAS, a review of Budget and Appropriations Committees' operations in other states could present options for consideration in this state;

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

That the Legislative Council conduct a study of the current Legislative Assembly Appropriations Committee structure by comparing it to other states' committee structures with a goal of the study to develop recommendations to reduce the current Appropriations Committees' workload and to increase the number of legislators involved in the appropriation process; and

BE IT FURTHER RESOLVED, that the Legislative Council review the structure of all Legislative Assembly standing committees to make recommendations for changes in their structures necessary to implement changes in the Appropriations Committee structure; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 804

HOUSE CONCURRENT RESOLUTION NO. 3019
(Representative Martinson)
(Senator Satrom)

LEGISLATIVE EMPLOYEE COMPENSATION

A concurrent resolution providing and designating House and Senate employees and fixing their compensation.

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

That for the Fiftieth Legislative Assembly the following named persons are employed and appointed as employees of the House and Senate and are to be paid the daily wages opposite their respective names in accordance with their positions as shown below:

HOUSE	
Roy Gilbreath, Chief Clerk	\$85.00
Barbara Middaugh, Desk Reporter	79.00
David Hillesland, Sergeant-at-Arms	64.00
Skip Sjothun, Assistant Chief Clerk	70.00
Jeane Marschke, Bill Clerk	64.00
Theola Stetson, Chief Stenographer and Payroll Clerk	64.00
Connie Johnsen, Chief Committee Clerk	64.00
Cindy Nelson, Appropriations Committee Clerk	66.00
Carol Nitschke, Assistant Appropriations Committee Clerk	62.00
Jan Mumma, Assistant Appropriations Committee Clerk	62.00
Sharon Lang, Assistant Appropriations Committee Clerk	62.00
Helen Soma, Committee Clerk	58.00
Darlyne Clausnitzer, Committee Clerk	58.00
Joan VonRueden, Committee Clerk	58.00
Judy Hoffman, Committee Clerk	58.00
Janice Stein, Committee Clerk	58.00
Lela Knudsen, Committee Clerk	58.00
Jonathan Thomson, Committee Clerk	58.00
Juanita Braun, Committee Clerk	58.00
Sandy Schafer, Committee Clerk	58.00
Kathy Ludwick, Committee Clerk	58.00
Claudia Tauer, Assistant Committee Clerk	55.00
Tove Mandigo, Chief Page and Bill Book Clerk	55.00
Cindy Kephart, Desk Page	48.00
Judy Koch, Desk Page	48.00
Barbara Larson, Desk Page	48.00

Barbara Hauser, Secretary to the Speaker	64.00
Mazie Patchen, Secretary to Majority Leader	70.00
Rick Collin, Assistant Secretary to Majority Leader	64.00
Judy Tinjum, Secretary to Minority Leader	70.00
Toni Lynn Heintz, Assistant Secretary to Minority Leader	64.00
Ron Carlisle, Deputy Sergeant-at-Arms	52.00
Dan O'Neil, Assistant Sergeant-at-Arms	48.00
Edgar Beyers, Assistant Sergeant-at-Arms	48.00
Ed Leno, Assistant Sergeant-at-Arms	48.00
Phyllis Connolly, Assistant Sergeant-at-Arms	48.00
Tom Belzer, Assistant Sergeant-at-Arms	48.00
Bill Harter, Assistant Sergeant-at-Arms	48.00
Mark Zimmerman, Assistant Sergeant-at-Arms	48.00
Jennifer Picken, Journal Page	48.00
Pam Crawford, Information Desk Attendant	48.00
Eugene Grenz, Chief Bill and Journal Room Clerk	58.00
Eli Nemer, Bill Room Clerk	48.00
Faye Caya, Bill Room Clerk	48.00
Harold Unterseher, Bill Room Clerk	48.00
George Leingang, Bill Room Clerk	48.00
MaryAnn Varriano, Bill Room Clerk	48.00
Pam Wheeler, Journal Room Clerk	48.00
Jeff Carlson, Journal Room Clerk	48.00
Vicky Friez, Telephone Attendant	48.00
Laura Johnson, Telephone Attendant	48.00
Linda Mueller, Telephone Attendant	48.00
Blenda Hoffart, Telephone Page	48.00
John Schmidt, Parking Lot Attendant	48.00
Barb Klein, Stenographer	52.00
Phyllis Johnson, Stenographer	52.00
Elizabeth Bergan, Stenographer	52.00
Marge Mosbrucker, Stenographer	52.00
Bertha Palen, Stenographer	52.00
Wilma Melstad, Typist	52.00
Sharon Jensen, Typist	52.00
David Hougen, Assistant Chief Page and Bill Book Clerk	52.00
Brian Overton, Page and Bill Book Clerk	48.00
Sheila Markel, Page and Bill Book Clerk	48.00
Sandy Steier, Page and Bill Book Clerk	48.00
Justin Gullekson, Page and Bill Book Clerk	48.00
Barb Brown, Page and Bill Book Clerk	48.00
Nick Chase, Page and Bill Book Clerk	48.00
Richard Stenberg, Page and Bill Book Clerk	48.00
Ginny Watson, Page and Bill Book Clerk	48.00
Tony Gross, Page and Bill Book Clerk	48.00
Robert Guler, Page and Bill Book Clerk	48.00
Lisa Neary, Page and Bill Book Clerk	48.00
Helen Schaible, Page and Bill Book Clerk	48.00
Curtis Paulson, Page and Bill Book Clerk	48.00
Neal Schlosser, Page and Bill Book Clerk	48.00
Kevin Urness, Page and Bill Book Clerk	48.00
Verne Westervall, Page and Bill Book Clerk	48.00
Helen Just, Janitor (partial pay only)	34.00
Francis Scharosch, Janitor (partial pay only)	36.00

Joe Emineth, Janitor (partial pay only)	43.00
Gene Reynolds, Janitor (partial pay only)	51.00
SENATE	
Perry Grotberg, Secretary of the Senate	\$85.00
Paula Riehl, Desk Reporter	79.00
Doug Nordby, Sergeant-at-Arms	64.00
Jim Kusler, Assistant Secretary of the Senate	70.00
Deanna Hill, Bill Clerk	64.00
Maureen Muhlhauser, Chief Stenographer and Payroll Clerk	64.00
Mary Schmitz, Chief Committee Clerk	64.00
Carin Noriega, Appropriations Committee Clerk	66.00
Victor Heier, Assistant Appropriations Committee Clerk	62.00
Caryl Hieb, Committee Clerk	58.00
Nancy Pfenning, Committee Clerk	58.00
Judi Markegard, Committee Clerk	58.00
Connie Skager, Committee Clerk	58.00
Kimberly Pollert, Committee Clerk	58.00
Michelle Kalenze, Committee Clerk	58.00
Nancy Dockter, Committee Clerk	58.00
Mary Haberman, Committee Clerk	58.00
Jeannette Shaw-Lynch, Committee Clerk	58.00
Michelle Larson, Committee Clerk	58.00
Brenda Miller, Assistant Committee Clerk	55.00
Lucy Miller, Chief Page and Bill Book Clerk	55.00
Stephanie Gullickson, Desk Page	48.00
Sandi Kershaw, Secretary to Majority Leader	70.00
Wanda Scheid, Assistant Secretary to Majority Leader	64.00
Jan Steinle, Secretary to Minority Leader	70.00
Marius Rogneby, Assistant Secretary to Minority Leader	64.00
Frank LaQua, Deputy Sergeant-at-Arms	52.00
Vern Thompson, Deputy Sergeant-at-Arms	52.00
Jim Walsh, Assistant Sergeant-at-Arms	48.00
Lance Hagen, Assistant Sergeant-at-Arms	48.00
Paul Janke, Assistant Sergeant-at-Arms	48.00
David Hetland, Jr., Journal Page	48.00
Janice Clancy, Information Desk Attendant	48.00
Delano Huston, Bill Room Clerk	48.00
Selma Carlson, Bill Room Clerk	48.00
Ledores Robey, Bill Room Clerk	48.00
Fred Schulz, Bill Room Clerk	48.00
Nettie Monroe, Journal Room Clerk	48.00
Joan Nelson, Journal Room Clerk	48.00
Renee Bullinger, Chief Telephone Attendant	52.00
Arlyne Hight, Telephone Attendant	48.00
Ruby Stadick, Telephone Attendant	48.00
Lunette Lipp, Telephone Attendant	48.00
Janet Britton, Telephone Page	48.00
Jeff Heider, Parking Lot Attendant	48.00
Sue Alexander, Stenographer	52.00
Mischelle Christensen, Stenographer	52.00
Sharon Neukircher, Stenographer	52.00
Alice Zako, Stenographer	52.00
LeLand Barth, Page	48.00
Scott Swanson, Page	48.00

Jacki Giovannoni, Page	48.00
Diane Larson, Page	48.00
Mae DelaBarre, Page	48.00
Brett Lloyd, Bill Book Clerk	48.00
Viola Wraalstad, Bill Book Clerk	48.00
Frank Christensen, Bill Book Clerk	48.00
William Landeis, Janitor (partial pay only)	32.00
Dick Lang, Janitor (partial pay only)	38.00
Luke Giesinger, Janitor (partial pay only)	51.00

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided for in this resolution ceases effective the last day of employment.

Filed January 26, 1987

CHAPTER 805

HOUSE CONCURRENT RESOLUTION NO. 3020 (O'Shea)

SOCIAL SECURITY BENEFIT DISPARITIES

A concurrent resolution urging an end to disparities in Social Security benefits for persons born in certain years.

WHEREAS, in 1977 the Congress of the United States, in pursuit of the praiseworthy goal of insuring the solvency of the Social Security system, adjusted the formula of payments for those born after 1916; and

WHEREAS, this adjustment has resulted in a substantial benefit disparity between those born between the years 1917 and 1921 and those born before and after those years; and

WHEREAS, the affected group, known as "notch-year babies", number approximately 14 million, many of whom were called upon to serve their country in World War II; and

WHEREAS, because of this disparity, "notch-year babies" receive approximately seven percent less in Social Security retirement benefits than do those with similar work years and basic final incomes and who were not born in the "notch" years; and

WHEREAS, this disparity represents a flagrant and insupportable discrimination against a significant number of American citizens; and

WHEREAS, the Congress of the United States currently has under consideration legislation which seeks to correct this injustice;

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

That the Fiftieth Legislative Assembly strongly urges that pending congressional legislation be given prompt and due consideration and that this discrimination against "notch-year babies" be ended; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the chairman of the House Committee on Ways and Means, the United States Secretary of Health and Human Services, and each member of the North Dakota Congressional Delegation.

CHAPTER 806

HOUSE CONCURRENT RESOLUTION NO. 3021 (Representative Rydell) (Senator Olson)

CHARITABLE SOLICITATIONS ACT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability for revision of the Charitable Solicitations Act.

WHEREAS, the last complete legislative enactment of the charitable solicitation statutes was in 1961; and

WHEREAS, county officials increasingly have had problems with out-of-state professional fundraisers operating within this state; and

WHEREAS, North Dakota statutes have been in conflict with decisions of the United States Supreme Court forcing piecemeal corrective action to follow those supreme court decisions; and

WHEREAS, a model act concerning solicitation of funds for charitable purposes was recently adopted by the National Association of Attorneys General; and

WHEREAS, House Concurrent Resolution No. 3075 of the 1985 Legislative Assembly directed the Legislative Assembly to study the desirability of adopting uniform or model laws where uniformity in state laws is desirable and practicable;

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

That the Legislative Council study the charitable solicitation statutes; and

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

Filed March 25, 1987

CHAPTER 807

HOUSE CONCURRENT RESOLUTION NO. 3022
(Representatives Strinden, Mertens)
(Senators Olson, Heigaard)

MISSOURI RIVER BANK STABILIZATION

A concurrent resolution requesting the United States Congress and the United States Army Corps of Engineers to assume the responsibility for Missouri River bank erosion in North Dakota and to complete a program of bank stabilization and maintenance along the Missouri River between the Garrison Dam and the Oahe Reservoir.

WHEREAS, the Flood Control Act of 1944, as amended by legislation sponsored by Senators O'Mahoney and Milliken, assured all 10 states within the Missouri River Basin equal benefits under a control and management program which came to be commonly known as the Pick-Sloan Plan; and

WHEREAS, the Congress has directed the United States Corps of Engineers to build, operate, and maintain all the elements of the Pick-Sloan Plan; and

WHEREAS, the Pick-Sloan Plan provided for major flood control benefits, recreational benefits, power supply benefits, and certain navigational benefits for states lying below Sioux City, Iowa, through construction of large reservoirs in states lying above that point; and

WHEREAS, the Pick-Sloan reservoirs have been in place for 32 years, thus providing the downstream states all the benefits promised in the Pick-Sloan Plan for the past 32 years; and

WHEREAS, construction of facilities under the Pick-Sloan Plan has, to date, resulted in three billion dollars of flood protection to downstream interests which continue to accrue and has allowed them to develop the floodplain of the Missouri for industrial, municipal, and agricultural uses; and

WHEREAS, the United States Army Corps of Engineers has stabilized and continues to maintain the entire channel of the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, all at federal cost; and

WHEREAS, to provide for the construction of the Pick-Sloan Plan the state of North Dakota has sacrificed over 550,000 acres of land including several cities and many established farms; and

WHEREAS, few, if any, of the commitments made to North Dakota in return for its sacrifices under the Pick-Sloan Plan have been fulfilled despite great efforts by North Dakota's Congressional Delegation, Legislative Assemblies, Governors, and other state officials, and despite continuing strong support by the citizens of the state; and

WHEREAS, almost two-thirds of the 2.25 million megawatt hours of cheap hydroelectric power generated by Garrison Dam in North Dakota built by the Pick-Sloan Plan is utilized in states outside of North Dakota; and

WHEREAS, the lands adjacent to the Missouri River between the Garrison Dam and the Oahe Reservoir have been and will continue to be seriously eroded and permanently lost by the local landowners and state of North Dakota because of reservoir management which releases highly fluctuating amounts of clear water capable of eroding and transporting large amounts of soil; and

WHEREAS, soil eroded from the banks of the Missouri River is being deposited as a delta in the headwaters of the Oahe Reservoir thereby causing the water table to rise in adjacent land, and is increasing the frequency and severity of ice jam hazards and has, according to recent Corps of Engineers' pronouncements, endangered 6,000 acres of land containing 45 homes and valuable farmland; and

WHEREAS, a similar bank erosion problem exists for a 60-mile reach on the South Dakota-Nebraska border downstream from the Gavins Point Dam and also below the Fort Peck Dam in Montana; and

WHEREAS, the United States Army Corps of Engineers stated in its Final Report to Congress dated December 1981 concerning Missouri River streambank erosion that "Bank erosion in this reach results in a permanent net loss of high valley lands. This process, unless halted, would eventually transform the present river into a wide area of sand bars and channels, occupying an increasing proportion of the valley width between the bluffs";

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

That the Fiftieth Legislative Assembly requests the United States Congress to assume the responsibility for the protection of lands now endangered along the Missouri River in North Dakota by the operation of the Pick-Sloan Plan; and

BE IT FURTHER RESOLVED, that the Congress of the United States authorize and provide funds to the Corps of Engineers for a program for the completion of protection of affected lands along the

Missouri River, and for the maintenance of the installed protective works; and

BE IT FURTHER RESOLVED, Congress is urged to fund this project, not as a normal federal water project appropriation, but instead as part of the maintenance budget of the Pick-Sloan Plan; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the North Dakota, South Dakota, Nebraska, and Montana Congressional Delegations, the commanding general of the United States Army Corps of Engineers, the Secretary of the Interior of the United States, the Governor of North Dakota, and the North Dakota State Water Commission.

Filed March 17, 1987

CHAPTER 808

HOUSE CONCURRENT RESOLUTION NO. 3023 (Rydell)

RATE FILING REVIEW STUDY

A concurrent resolution directing the Legislative Council to study the procedures and requirements for review of rate filings by health insurers.

WHEREAS, health insurance companies are statutorily required to establish rates to cover reasonably anticipated claims and costs of operation and overhead, to maintain contingency reserves at a proper level, and to provide that rates may not be excessive, inadequate, or unfairly discriminatory; and

WHEREAS, insurers may bid on a basis other than a cost justified basis in order to provide coverage for a large group of insureds; and

WHEREAS, providing coverage to these "captive" insureds on a nonjustified basis requires the insurer to increase rates to those insured who are not part of the "captive" group; and

WHEREAS, health insurers, including nonprofit health service corporations and health maintenance organizations, must file rate schedules with the Commissioner of Insurance for approval or disapproval; and

WHEREAS, any practice which results in "discriminatory" rates should be adequately reviewed by the Commissioner of Insurance pursuant to statutory requirements to ensure a viable health insurance industry and to ensure that the rates charged insureds are cost justified;

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

That the Legislative Council conduct a study of the rate approval procedures followed by the Commissioner of Insurance with respect to health insurers, nonprofit health service corporations, health maintenance organizations, and preferred provider organizations, with special emphasis on the practices of these entities with respect to whether rates cover reasonably anticipated claims of individual groups, cover reasonable costs of operation and overhead expenses, and maintain contingency reserves at appropriate levels with respect to individual groups; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 809

HOUSE CONCURRENT RESOLUTION NO. 3024 (Rydell)

CAREER GUIDANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing educational programs relating to career guidance and development for children and adults in the state.

WHEREAS, career development is the process of acquiring knowledge, skills, and attitudes which will enable an individual to take a productive and satisfying role in society; and

WHEREAS, the basic components essential for the achievement of career development, namely, self-realization, social relationships, civic responsibilities, and economic efficiency, are among the basic purposes and objectives of public education in North Dakota; and

WHEREAS, career guidance and development is a continuing process best facilitated by educational programs that begin in the early years of an individual's life; and

WHEREAS, the implementation of educational programs relating to career guidance and development is necessary to assist children and adults in making informed career plans and decisions based on knowledge of the world of work, occupational and labor market information, and career exploration, self-assessment, and decisionmaking techniques, and to assist educators, state planners, and policymakers in developing improved educational measures and counseling tools; and

WHEREAS, a serious need presently exists in this state to increase the effectiveness of career guidance and development for children and adults as career counselors generally lack written career guidance and development guidelines, are assigned unrelated tasks in their educational settings, and are provided inadequate work space, materials, and clerical support; and

WHEREAS, the North Dakota Occupational Information Coordinating Committee has received funding for the development and publication of guidelines and standards for use nationwide by states

and local school districts in developing and implementing competency-based career guidance programs for children and adults with emphasis on identifying client outcomes by educational level, counselor competencies, and appropriate institutional resources and capabilities;

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

That the Legislative Council study the feasibility and desirability of establishing and providing assistance for educational programs in career guidance and development for children and adults; and

BE IT FURTHER RESOLVED, that the Legislative Council seek recommendations and obtain information concerning the need for career guidance and development programs from counseling professionals representing state agencies, universities, colleges, and elementary and secondary schools, and representatives of the North Dakota Occupational Information Coordinating Committee, the Department of Public Instruction, the State Board of Vocational Education, Job Service North Dakota, and the State Board of Higher Education; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 810

HOUSE CONCURRENT RESOLUTION NO. 3025
(Representatives Hill, Schindler, Kelly)
(Senators Adams, Peterson)

FOREIGN LANGUAGE AND TECHNOLOGY STUDY

A concurrent resolution expressing the importance of the knowledge of foreign languages and the potential benefits to be derived from the use of electronic media to assist in teaching foreign languages in North Dakota schools, and directing the Legislative Council to study the feasibility, cost, and benefits of utilizing current technology to enhance the educational opportunities of North Dakota students.

WHEREAS, the understanding of foreign languages and cultures is necessary for the citizens of this state to become competitive in world trade markets; and

WHEREAS, the economic health of the state of North Dakota is increasingly dependent upon the export market to foreign countries; and

WHEREAS, the continued effectiveness of American foreign policy depends upon diplomatic and intelligence gathering efforts which are based upon a sound knowledge of the world; and

WHEREAS, in order that official policies will reflect the concerns and interests of the American people it is essential for the general public to understand world events; and

WHEREAS, very few students are engaged in the study of foreign languages and international studies in North Dakota schools, colleges, and universities, despite the growing importance of these subjects to the welfare of the nation, state, and the people; and

WHEREAS, the Presidential Commission on Education, the College Board, and the Carnegie Report on Education all recommend increased emphasis on foreign language education; and

WHEREAS, the United States Congress has resolved that local educational agencies and institutions of higher education should consider strengthening the study of foreign languages and cultures through appropriate actions; and

WHEREAS, via the use of current technology such as satellite technology, fiber optics in telephones, and other electronic media, the educational opportunities of North Dakota students can be inexpensively enhanced;

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

That the Fiftieth Legislative Assembly of North Dakota expresses its interest in strengthening foreign language study by gradually requiring the study of foreign languages and cultures as a prerequisite for entrance to postsecondary institutions, requiring courses in international studies and proficiency in a foreign language as a prerequisite to college graduation, improving the courses on international studies in the curriculum at all levels of education, encouraging international exchange programs, offering foreign languages at the secondary school level, placing greater emphasis on teaching foreign languages and cultures for elementary school children, and using programs transmitted by electronic media as a means of making foreign language study available in schools in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council study the feasibility, cost, and benefits of utilizing current technology to enhance the educational opportunities of North Dakota students; 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-first Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Superintendent of Public Instruction.

Filed March 18, 1987

CHAPTER 811

HOUSE CONCURRENT RESOLUTION NO. 3027
(Representatives Almlie, V. Olson, Goetz)
(Senator Tweten)

HIGHER EDUCATION CHANGES URGED

A concurrent resolution urging the State Board of Higher Education to implement changes in higher education in North Dakota.

WHEREAS, in January 1986 the State Board of Higher Education appointed an advisory panel on the future of higher education in North Dakota; and

WHEREAS, the purpose of the advisory panel on the future of higher education in North Dakota was to develop a written report to the State Board of Higher Education reviewing key policy issues in the North Dakota higher education system and to make policy recommendations designed to maintain the strengths of the system and further improve it within the constraints and opportunities of the state; and

WHEREAS, the panel reviewed the condition of higher education in North Dakota in the context of the state's present trends and addressed broad policy areas such as system organization, educational access, institutional missions and roles, and the ability of the state to continue its current level and type of service to students throughout the state; and

WHEREAS, the advisory panel on the future of higher education in North Dakota visited each of the 11 colleges and universities in this state and met with campus and community leaders, legislators, members of the State Board of Higher Education, media representatives, and other interested persons; and

WHEREAS, the recommendations are intended to reaffirm the primary role of the board to plan for the future of higher education in North Dakota; end the divisive arguments over closing campuses; clarify the meaning and value of access and point to realistic ways of increasing access; and improve the method of financing the colleges and universities to increase equity, flexibility, and accountability;

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

That the Fiftieth Legislative Assembly urges the State Board of Higher Education to adopt the following recommendations of the advisory panel:

1. That the Governor and the legislative leadership should take all steps necessary to charge the State Board of Higher Education with developing a true state system of higher education and that the board should work with the institutions, executive branch, and Legislative Assembly toward this end.
2. The board should set priorities and make plans for higher education in North Dakota subject to oversight by elected officials. Any legislation required to outline the specific duties associated with planning, monitoring, oversight, and policy review should be enacted.
3. Policy discussions about access to educational opportunity for North Dakotans should focus sharply on its several critical dimensions: geographic, program, convenience for students, ability to pay, and ability to benefit as determined by qualitative standards for admission.
4. The political and educational leadership of this state should enter into critical review and discussion to determine the extent to which the historic practice of open enrollment encourages or discourages an effective match between the interests and talents of students and the role and mission of the 11 institutions.
5. The State Board of Higher Education should affirm the need for postsecondary education programs in the communities of Devils Lake, Bottineau, and Mayville and should consider the roles of those institutions and decide what kinds of new institutional arrangements would yield the best educational services to the people in those areas.
6. The State Board of Higher Education should work with the institutions to establish a sharply focused mission, role, and scope for each institution that clearly differentiates it from the others and is geared to statewide needs. The board should ensure that all its decisions reinforce rather than depart from institutional mission, role, and scope agreements.
7. The board should particularly review all one-year certificate and two-year associate degree level programs at its senior campuses to determine, based on program quality, program responsiveness to specific needs of the state, and the presence of unique facilities or resources

- designed for the support of the programs, whether continuation is justified.
8. The board, the Governor, and the Legislative Assembly should make every effort to protect and nurture the quality of the faculty, with the understanding that they are the very heart of each college and university.
 9. The board should:
 - a. Continue its practice of periodic, special reviews of degree programs throughout the state or on individual campuses.
 - b. Officially recognize campus-based review processes and timetables for the review of individual degree programs.
 - c. Expand the value of campus-based reviews by requesting common, systemwide information (including degrees awarded, finances, learning resources, adequacy of classrooms and laboratories, and depth of faculty resources).
 - d. Establish a campus reporting procedure to enable the board staff to monitor the results of campus program reviews and, should there be disagreements with a decision following a review, to challenge the decision in an orderly fashion.
 10. In the interest of access, the board should ensure that the faculties of North Dakota's colleges and universities provide general education opportunities that are basically comparable throughout the state.
 11. The presidents and faculties of the 11 campuses should work together with the board to develop and implement a policy for student transfer that protects the earned credits of students as well as the institution's right to determine major field requirements and to grant its degrees.
 12. The board should consider enrollment ceilings only in the context of the affirmed or revised role and mission statements recommended elsewhere in the project.
 13. If enrollment ceilings are to be adopted or if smaller enrollments are encouraged as a matter of educational philosophy, the universities should not be penalized by budget cuts. Universities must have ways to reduce their overall size yet continue to be compensated equitably for mission-specific and fixed operating costs unrelated to enrollment.

14. The board, in concert with the State Department of Public Instruction, should take all necessary initiatives to engage faculties of the high schools and the colleges in serious, sustained planning to address all aspects of problems associated with the underprepared student.
15. The board should explore with the 11 institutions ways to develop centers of higher education. It should subsequently establish a policy and procedure to encourage and guide the formation and support of such centers and encourage the Governor and Legislative Assembly to support necessary changes in funding structures.
16. The board should establish as policy that each of the 11 institutions develop formal relationships with schools in its region in order to encourage regular, systematic communication on matters of mutual interest and concern.
17. The board should work to achieve a greater degree of financial equity in its interstate reciprocity agreement with Minnesota. Equity should not be defined as exact numerical or dollar balances each year or biennium but rather as a rough balance over time.
18. The State Board of Vocational Education and the State Board of Higher Education should work together to adopt a total system view and plan accordingly for the emerging postsecondary, vocational-technical education needs of North Dakota.
19. The board, in cooperation with the legislative and executive branches, should establish a single, basic higher education funding formula designed with particular attention to the fixed and variable costs of the 11 campuses.
20. The new funding formula should enable institutions to become smaller without incurring undue financial penalty.
21. The board should continue to have existing mechanisms for budget flexibility and should work with the legislative and executive branches to achieve greater budgetary flexibility for the board and for individual campuses in order to meet unexpected institution and system needs during a biennium.
22. The board should be provided with an increase in pooled funds for board use in meeting unexpected interinstitutional and system needs during a biennium. It should also receive a greater degree of authorized discretion in expending pooled funds.

23. The board should be provided with staff and operating resources sufficient to support its proper, necessary leadership role.
24.
 - a. The 1987 Legislative Assembly should increase state-funded student financial aid, if fiscally feasible, to the level proportionate with 1981 tuition rates, as recommended by the interim Budget Committee on Higher Education.
 - b. The Board of Higher Education and the Legislative Assembly should limit the increase in resident student tuition to no more than the projected increase in the consumer price index, as recommended by the interim Budget Committee on Higher Education.
25. The board should work with the Governor and Legislative Assembly to establish a state work-study program to supplement its present programs of financial aid.
26. The board should be provided with a discretionary fund of new moneys to encourage innovations that will improve academic quality in the institutions.
27. The board should receive capital funds for urgent plant maintenance and upgrading scientific equipment.
28. The board and campuses should explore the feasibility of centralizing certain administrative functions. The controlling test is whether savings can be demonstrated without costly delays, new inefficiencies, or infringements on campus self-governance.
29. The board should request the Legislative Assembly to provide state support for approved credit programs offered in higher education centers; and

BE IT FURTHER RESOLVED, that the State Board of Higher Education report to the Legislative Council, or any committee the Legislative Council designates, during the 1987-88 interim on the board's progress in adopting the recommendations.

Filed April 1, 1987

CHAPTER 812

HOUSE CONCURRENT RESOLUTION NO. 3028
(Representative Strinden)
(Senators Tallackson, Olson)DEINSTITUTIONALIZATION EFFORT
RECOGNITION

A concurrent resolution urging the United States District Court for the District of North Dakota to recognize the good faith efforts of the state of North Dakota in attempting to comply with the district court's order concerning the deinstitutionalization of developmentally disabled persons and to modify the order to allow the state to emphasize the individual needs of developmentally disabled persons rather than institution population levels.

WHEREAS, on August 31, 1982, the United States District Court for the District of North Dakota issued its order in the case of Association for Retarded Citizens of North Dakota v. Olson (the name of the defendant has since been changed to Sinner) which required the state to seek placement of the developmentally disabled in existing licensed and accredited facilities or to create community-based residential services to reduce the population at the Grafton State School and San Haven to not more than 450 residents by July 1, 1987, and to not more than 250 residents by July 1, 1989, and to comply with Title XIX regulations by July 1, 1985, and standards for services for developmentally disabled persons developed by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons by July 1, 1987, at any facility where a developmentally disabled person is residing; and

WHEREAS, on November 7, 1984, the district court modified its order and created an additional deadline for reducing the number of residents at the Grafton State School and San Haven to not more than 552 persons by July 1, 1985; and

WHEREAS, on June 17, 1985, the district court issued a memorandum and order accepting the parties' stipulated compromise requiring the state to reduce the combined population of the Grafton State School and San Haven to 450 residents by July 1, 1986, one year sooner than required by the district court's original order, to not more than 350 persons by January 1, 1988, and to no more than 250 persons by as early as January 1, 1989; and

WHEREAS, as of October 1986 the state had reduced the population of the Grafton State School and San Haven to 430 residents; and

WHEREAS, despite current budgetary constraints, the state is continuing its good faith efforts to comply with the court-established requirements notwithstanding substantial encroachment on the state's ability to fund other needed programs; and

WHEREAS, the state's efforts to comply with the orders of the district court involve the development of plans and procedures with far-reaching ramifications and involve the appropriation and expenditure of large amounts of tax dollars; and

WHEREAS, the district court retained continuing jurisdiction over the deinstitutionalization of the developmentally disabled until the orders of the court are fully implemented;

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

That the Fiftieth Legislative Assembly urges the United States District Court for the District of North Dakota to modify the court's order for the deinstitutionalization of the developmentally disabled to allow the state to emphasize individual needs of the developmentally disabled rather than institution population levels and to emphasize state control over developmental disabilities services; and

BE IT FURTHER RESOLVED, that the Secretary of State is directed to forward a copy of this resolution to the Attorney General of North Dakota for an appropriate pleading to be submitted to the district court.

Filed April 1, 1987

CHAPTER 813

HOUSE CONCURRENT RESOLUTION NO. 3031 (Martinson)

FORECLOSURE LAWS STUDY

A concurrent resolution directing the Legislative Council to study the nonagricultural real estate foreclosure laws of the state of North Dakota in relation to the foreclosure laws adopted by other states.

WHEREAS, it is a legislative responsibility to review existing laws to provide procedures in the North Dakota court system which are efficient and understandable by all parties affected thereby; and

WHEREAS, many laws governing the foreclosure of nonagricultural real estate mortgages were adopted more than fifty years ago prior to the sale of a real estate mortgage by lenders on the secondary market; and

WHEREAS, current state laws establish a different procedure for foreclosure of a real estate mortgage by the state of North Dakota than for private lenders; and

WHEREAS, the present laws of the state of North Dakota, in effect, do not allow for deficiency judgments, which are permitted in nearly all other states; and

WHEREAS, the present statutes in North Dakota dealing with foreclosures of nonagricultural real estate mortgages may affect the ability of lenders to sell loans on a secondary market;

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

That the Legislative Council study present laws dealing with foreclosure of nonagricultural real estate mortgages in the state of North Dakota by the state of North Dakota and private lenders, and that the Legislative Council review foreclosure laws of other states in order to determine the desirability of adopting new laws in the state of North Dakota; 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-first Legislative Assembly.

CHAPTER 814

HOUSE CONCURRENT RESOLUTION NO. 3032
(Representatives J. DeMers, Haugland, Mertens)
(Senators Waldera, Todd, Schoenwald)

BLOCK GRANT PROGRAM

A concurrent resolution expressing appreciation for the contributions made by community action agencies on behalf of the low income population of this state and urging the Congress of the United States to continue funding the community services block grant program.

WHEREAS, over 80,000 residents of North Dakota live on annual incomes below the poverty level; and

WHEREAS, community action agencies provide a broad range of services and activities to help the poor secure employment, attain education, manage available income, obtain and maintain adequate housing, obtain emergency assistance, overcome obstacles to self-sufficiency, and participate in the affairs of the community; and

WHEREAS, each community action agency has a board of directors composed of democratically elected representatives of low income persons, elected public officials or their designees, and representatives of local business, education, religious, civic, and charitable organizations; and

WHEREAS, community action agencies in North Dakota have completed 10 or more years of service to the low income population and communities of this state;

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

That the Fiftieth Legislative Assembly expresses its appreciation on behalf of the citizens of North Dakota for the valuable contributions made by the boards of directors, employees, and the many volunteers associated with Community Action Opportunities, Inc., of Minot; Dakota Prairie Community Action Agency, Inc., of Devils Lake; Quad County Community Action Agency of Grand Forks; Southeastern North Dakota Community Action Agency of Fargo; Community Action Region VI, Inc., of Jamestown; Community

Action Program VII, Inc., of Bismarck; and Community Action and Development Program, Inc., of Dickinson; and

BE IT FURTHER RESOLVED, that the Congress of the United States is urged to continue funding the community services block grant program which is an essential source of funding for community action agencies; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to each member of the North Dakota Congressional Delegation and to the chairpersons of the boards of directors and executive directors of community action agencies in the state.

Filed March 25, 1987

CHAPTER 815

HOUSE CONCURRENT RESOLUTION NO. 3035 (Meyer, Klundt, D. Olsen, Strinden)

INSTRUCTORS' ENGLISH PROFICIENCY

A concurrent resolution recommending that the State Board of Higher Education take remedial action concerning problems created by the instructional staff at the state institutions of higher education who have difficulty speaking English.

WHEREAS, many of the instructors at the state institutions of higher education which are under the control of the State Board of Higher Education have a language other than English as their principal language; and

WHEREAS, students enrolled in courses taught by those instructors have difficulty understanding them; and

WHEREAS, many residents of this state, many former students, and many students currently enrolled in the institutions of higher education in this state are concerned about the quality of instruction that is being received from the instructional staff who have difficulty speaking the English language;

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

That the Fiftieth Legislative Assembly recommends that the State Board of Higher Education immediately study the magnitude of the problem caused by instructors who have difficulty with the English language and that the board take the necessary action to reduce and ultimately eliminate this problem; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the members of the State Board of Higher Education.

Filed April 1, 1987

CHAPTER 816

HOUSE CONCURRENT RESOLUTION NO. 3038
(Representatives Wald, Goetz)
(Senators Waldera, David)

BLUE HAWKS FOOTBALL TEAM

A concurrent resolution congratulating the 1986 State University of North Dakota - Dickinson Blue Hawks football team for its nationally ranked performance.

WHEREAS, the State University of North Dakota - Dickinson Blue Hawks football team, coached by Hank Biesiot, recently completed its eighth consecutive winning season, closing its 1986 season with a perfect nine wins and no losses regular season record; and

WHEREAS, the Blue Hawks were ranked as high as number two and finished their season ranked third in the National Association of Intercollegiate Athletics Division II ratings; and

WHEREAS, the Blue Hawks achieved a national ranking of second in team scoring defense, second in team rushing defense, fifth in team scoring offense, seventh in team rushing offense, and seventh in team total offense; and

WHEREAS, the Blue Hawks appeared in an NAIA quarter final playoff game; and Dickinson, for the first time, hosted an NAIA Division II playoff; and

WHEREAS, the State University of North Dakota - Dickinson Blue Hawk football team has brought national recognition to Dickinson and this state;

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

That the Fiftieth Legislative Assembly extends to all members of the Blue Hawk football team and to their coach, Hank Biesiot, its heartiest congratulations for their superlative athletic performances and national achievement; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to coach Hank Biesiot and the Blue Hawk football team members.

Filed February 10, 1987

CHAPTER 817

HOUSE CONCURRENT RESOLUTION NO. 3039
(Representatives Strinden, Mertens)
(Senators Heigaard, Olson)

CITIZENS DAY

A concurrent resolution designating October 1, 1989, as "Citizens Day" to recognize the role citizens played in creating and developing the state of North Dakota.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for recognizing and remembering the contribution people played in creating and developing North Dakota; and

WHEREAS, it is universally acknowledged that citizens are a state's most valuable resource; and

WHEREAS, North Dakota voters approved the state constitution by a vote of 27,441 to 8,108 on October 1, 1889, and elected their governing officials;

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

That October 1, 1989, is designated as "Citizens Day" and the Governor is urged to issue a proclamation requesting people of the state to recognize and remember as may be most convenient and proper the 100th anniversary of the election wherein citizens approved the creation of the state of North Dakota and elected their governing officials; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor.

Filed February 10, 1987

CHAPTER 818

HOUSE CONCURRENT RESOLUTION NO. 3040
(Representatives Strinden, Mertens)
(Senators Heigaard, Olson)

CENTENNIAL BRIDGE

A concurrent resolution designating the new highway bridge carrying Bismarck Expressway across the Missouri River between Bismarck and Mandan as the North Dakota Centennial Bridge.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for establishing permanent reminders of this significant event in state history; and

WHEREAS, the North Dakota Centennial Commission is charged with stimulating, coordinating, conducting, and assisting in activities relating to 100 years of statehood; and

WHEREAS, the new bridge carrying Bismarck Expressway across the Missouri River between Bismarck and Mandan is presently without a name; and

WHEREAS, the North Dakota Centennial Commission has adopted a resolution in favor of naming this bridge;

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

That the new highway bridge carrying Bismarck Expressway across the Missouri River between Bismarck and Mandan is designated as the "Centennial Bridge" in observance of 100 years of statehood for North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor and the State Highway Commissioner.

Filed February 10, 1987

CHAPTER 819

HOUSE CONCURRENT RESOLUTION NO. 3041
(Representatives Strinden, Mertens)
(Senators Heigaard, Olson)

STATEHOOD DAY

A concurrent resolution designating November 2 of each year as "Statehood Day" observing North Dakota's entry into the Union.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for establishing permanent reminders of significant events in state history; and

WHEREAS, President Benjamin Harrison signed a proclamation of statehood admitting North Dakota into the Union on November 2, 1889;

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

That in order to promote and encourage the observance and remembrance of that day in 1889 when North Dakota entered the Union as a state, November 2 of each year is designated and established as "Statehood Day" for the State of North Dakota. State officials are encouraged to observe as may be most convenient and proper the anniversary of North Dakota statehood.

Filed February 10, 1987

CHAPTER 820

HOUSE CONCURRENT RESOLUTION NO. 3042
(Representatives Strinden, Mertens)
(Senators Heigaard, Olson)

DIVISION DAY

A concurrent resolution designating July 10, 1988, as "Division Day" to observe and remember the day when citizens of Dakota Territory convened a "pro-division" convention to create two states.

WHEREAS, the State Centennials of North Dakota and South Dakota are celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for greater awareness of those events that were significant to the transformation from Dakota Territory into the states of North Dakota and South Dakota; and

WHEREAS, citizens of Dakota Territory convened a pro-division convention in Huron on July 10, 1888;

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

That July 10, 1988, is designated as "Division Day" and the Governor is urged to issue a proclamation requesting the people of the state and the appropriate state agencies to participate in a joint project with citizens of the state of South Dakota to observe and remember the 100th anniversary of formal planning that led to the creation of two states from Dakota Territory; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the governors of North Dakota and South Dakota and to the presiding officer of each house of the South Dakota Legislative Assembly.

Filed February 10, 1987

CHAPTER 821

HOUSE CONCURRENT RESOLUTION NO. 3043 (Representatives Strinden, Mertens) (Senators Heigaard, Olson)

NATIVE AMERICAN DAY

A concurrent resolution designating April 5, 1989, as "Native American Day" to honor the indigenous people of the land that became the state of North Dakota.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for recognizing that the land that became North Dakota had been peopled for thousands of years prior to statehood; and

WHEREAS, numerous natural and manmade features of North Dakota are yet referred to by names given by these early Native American stewards of the land; and

WHEREAS, the descendants of these early, upper plains inhabitants today contribute significantly to modern North Dakota society;

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

That April 5, 1989, be designated as "Native American Day" and that the Governor is urged to issue a proclamation requesting people of the state to recognize and honor as may be most convenient and proper the native people and their ancestors who occupied the land that became the state of North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor.

Filed February 10, 1987

CHAPTER 822

HOUSE CONCURRENT RESOLUTION NO. 3047 (Mertens, Strinden, Martinson)

STATE EMPLOYEES HEALTH INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the North Dakota state employees health insurance program.

WHEREAS, direct payments for persons enrolled in the uniform group insurance program for state employees are approaching \$45 million per biennium; and

WHEREAS, health insurance premiums need to increase 35 percent for active employees and 85 percent for retired employees if current benefits are to continue; and

WHEREAS, the executive budget recommends a six percent increase for the first year and a seven percent increase for the second year of the 1987-89 biennium; and

WHEREAS, the cost of medical benefits for retired employees is increasing more rapidly than for current employees; and

WHEREAS, retired employees must pay the full cost of premiums; and

WHEREAS, the limitations placed on state revenues may affect the state's ability to finance the current medical insurance program; and

WHEREAS, the Legislative Assembly does not directly control the level and type of benefits provided by the current uniform group insurance plan administered by the Public Employees Retirement System; and

WHEREAS, the development of a long-term benefits and funding plan for retired employees could avoid serious fiscal problems in future years;

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

That the Legislative Council conduct a study of the uniform group insurance program administered by the Public Employees Retirement System to determine the extent to which the program should be subject to legislative control, the type of administration best suited for the program, and options for providing adequate affordable coverage for active and retired employees; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 823

HOUSE CONCURRENT RESOLUTION NO. 3048
(Representatives Nowatzki, O'Shea, Anderson)
(Senators Vosper, Richard)

GRAIN TESTING STUDY

A concurrent resolution directing the Legislative Council to study the use of near infrared reflectance analyzers to test grain protein content.

WHEREAS, high grain protein content is of significant economic value to North Dakota farmers and public warehousemen in the marketing of grain; and

WHEREAS, most grain warehousemen use near infrared reflectance analyzers to determine the percentage of protein in grain because these analyzers are easy and convenient to operate; and

WHEREAS, near infrared reflectance analyzers are subject to considerable variability in performance because maintenance and calibration of an analyzer and the testing procedure of the operator affect the results;

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

That the Legislative Council study the use of near infrared reflectance analyzers to determine the feasibility of establishing a procedure to assure and certify the accuracy of grain protein reflectance analyzers used in this state; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 824

HOUSE CONCURRENT RESOLUTION NO. 3049 (Larson)

CHAND LOSS REDUCTION STUDY

A concurrent resolution directing the Legislative Council to study methods of reducing losses incurred by the Comprehensive Health Association.

WHEREAS, the Comprehensive Health Association is a statutory entity created to provide health insurance coverage to people normally unable to obtain accident and health insurance; and

WHEREAS, there has been dramatic growth in enrollments in, and a corresponding increase in the number of claims and losses of, the Comprehensive Health Association since its inception in 1981; and

WHEREAS, factors that may have contributed to the increase in losses include the level of premiums permitted, the range of benefits required, and the mandatory buyout of the waiting period to obtain coverage of preexisting conditions; and

WHEREAS, to maintain the viability of the Comprehensive Health Association, care management and cost containment procedures may be necessary, including requirements for second opinions, concurrent and retrospective review of hospital admissions, preadmission authorization, and medical record and claim audits;

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

That the Legislative Council study the plans required to be offered by the insurance companies who are members of the Comprehensive Health Association to determine whether losses can be reduced, including a review of the basic care management, cost containment measures, and utilization of control techniques that may be appropriate for the Comprehensive Health Association; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 825

HOUSE CONCURRENT RESOLUTION NO. 3050 (Whalen)

LABOR AGENCY CONSOLIDATION STUDY

A concurrent resolution directing the Legislative Council to study the functions and duties of Job Service North Dakota and the Workmen's Compensation Bureau with a view toward reorganizing those agencies.

WHEREAS, Job Service North Dakota and the Workmen's Compensation Bureau exist as separate state agencies; and

WHEREAS, those agencies perform roughly analogous functions with respect to the workers of this state, namely insuring them against loss of wages due to economic events and against injury on the job; and

WHEREAS, in many states of the Union the functions presently performed by Job Service North Dakota and the Workmen's Compensation Bureau are performed by a single state agency; and

WHEREAS, combining the functions of Job Service North Dakota and the Workmen's Compensation Bureau might increase governmental efficiency and provide improved services to the employers and workers of this state, as well as a more efficient and more effective use of public funds;

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

That the Legislative Council study the functions and duties of Job Service North Dakota and the Workmen's Compensation Bureau, particularly with a view as to whether those functions should be performed by a single agency; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 826

HOUSE CONCURRENT RESOLUTION NO. 3051
(Representative Smette)
(Senator Adams)
(Approved by the Committee on Delayed Bills)

INTERNATIONAL PEACE GARDEN

A concurrent resolution urging state agencies, especially the Economic Development Commission and the State Highway Department, to give recognition and publicity to the International Peace Garden in their publications.

WHEREAS, for over 50 years the International Peace Garden has represented an unparalleled spirit of friendship and cooperation between two of the greatest nations in the world; and

WHEREAS, through the International Music Camp and the Legion Athletic Camp, the International Peace Garden provides exceptional opportunities for aspiring young athletes, musicians, and creative artists to hone their talents under the instruction of internationally acclaimed faculty; and

WHEREAS, thousands of people every year visit the International Peace Garden and marvel at the exquisite beauty and pastoral serenity of this botanical masterpiece; and

WHEREAS, the International Peace Garden stands as an enduring testament to the desire to achieve peace and goodwill among nations; and

WHEREAS, increased publicity and recognition of the International Peace Garden would enhance public awareness of the inspiration and singular beauty of this unique attraction;

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

That the Fiftieth Legislative Assembly strongly urges that all state agencies, especially the Economic Development Commission and the State Highway Department, give recognition and publicity to the International Peace Garden in their publications; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Director of Tourism of the Economic Development Commission, the State Highway Commissioner, and to all other state agencies that could give recognition and publicity to the International Peace Garden in their publications.

Filed March 18, 1987

CHAPTER 827

HOUSE CONCURRENT RESOLUTION NO. 3053
(Representatives G. Berg, Peterson, Kuchera)
(Senators Adams, Streibel, Redlin)

WATERFOWL STUDY

A concurrent resolution directing the Legislative Council to study the problems caused by and associated with waterfowl.

WHEREAS, waterfowl located in this state and waterfowl migrating from pothole to pothole, stream to stream, lake to lake, river to river, and river basin to river basin may carry and spread disease, biota, fish, fish eggs, and undesirable plant seeds, contribute wastes and nutrients, and may cause a general diminution in water quality; and

WHEREAS, problems associated with botulism and algae on the state's rivers, lakes, and potholes may affect the quality and quantity of water available for residential, municipal, industrial, recreational, and agricultural use in this state; and

WHEREAS, botulism epidemics have killed a large number of waterfowl in North Dakota national wildlife refuges and in other areas of the state and nation; and

WHEREAS, it is in the public interest and enhances the public welfare to have adequate and clean water resources for all beneficial uses, including the state's waterfowl;

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

That the Legislative Council study the problems caused by and associated with waterfowl, especially problems caused in those areas of the state having seasonal waterfowl concentrations such as wildlife refuge systems and other water-oriented waterfowl management areas and the potential of these problems to adversely impact the supply of water in this state; and

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

Filed March 18, 1987

CHAPTER 828

HOUSE CONCURRENT RESOLUTION NO. 3054
(Representatives Payne, Kloubec, R. Berg, Dorso,
Gorman, Kelly, Moore, C. Nelson, Scherber, Schneider)
(Senators Lashkowitz, Mathern, Nalewaja, Peterson, Tennesfos)
(Approved by the Committee on Delayed Bills)

BISON FOOTBALL TEAM CONGRATULATED

A concurrent resolution congratulating the North Dakota State University Bison football team on winning their third NCAA Division II football championship.

WHEREAS, the North Dakota State University Bison football team, coached by Earle Solomonson, completed their 1986 season with a record of 13 wins and no losses and captured the NCAA Division II championship for the third time in the last four seasons; and

WHEREAS, the Bison have appeared in Division II post-season play during six successive seasons, a feat unequaled by any other team; and

WHEREAS, the Bison have been awarded national championships by the wire service in 1965, 1968, and 1969, and have won national championships on the playing field in 1983, 1985, and 1986; and

WHEREAS, during the first round of the 1986 Division II playoffs, the Bison set a single game rushing record of 523 yards and then culminated their playoff performance by establishing a Division II playoff total rushing record of 1,146 yards; and

WHEREAS, the Bison established a record of 11 wins and one loss during the past 12 Division II playoff games and the Bison's 13 wins and no losses during the 1986 season continues an extraordinary 23 game winning streak; and

WHEREAS, the Bison football program is widely regarded as the most successful football program in Division II history, an accomplishment of which all North Dakotans can be justifiably proud;

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

That the Fiftieth Legislative Assembly takes great pride and pleasure in extending to all members of the North Dakota State

University Bison football team and their coach Earle Solomonson its heartiest congratulations for their superlative athletic achievements and nationally recognized performance; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the administration of North Dakota State University, all members of the North Dakota State University Bison football team, and coach Earle Solomonson.

Filed February 10, 1987

CHAPTER 829

HOUSE CONCURRENT RESOLUTION NO. 3055
(Representatives Payne, Kloubec, R. Berg, Dorso,
Gorman, Kelly, Moore, C. Nelson, Scherber, Schneider)
(Senators Lashkowitz, Mathern, Nalewaja, Peterson, Tennesfos)
(Approved by the Committee on Delayed Bills)

JEFF BENTRIM CONGRATULATED

A concurrent resolution congratulating Jeff Bentrिम on receiving the Harlon Hill Trophy and for his nationally recognized athletic achievements.

WHEREAS, Jeff Bentrिम, as quarterback of the North Dakota State University Bison, has led the Bison to three national NCAA Division II titles within the past four seasons; and

WHEREAS, during the Bison's 1986 Division II championship win over the South Dakota Coyotes, Jeff Bentrिम rushed for 111 yards and scored two touchdowns; and

WHEREAS, while leading the Bison to a 13 wins and no losses season record in 1986, Jeff Bentrिम broke Walter Payton's career touchdown rushing record, set 11 school records, and ran for over 100 yards four times during the season, giving him a career total of seventeen 100-yard games; and

WHEREAS, Jeff Bentrिम has accomplished the unparalleled feat of leading the Division II in scoring for three years; and

WHEREAS, Jeff Bentrिम has been selected as captain of the offense on the Associated Press Little All-American football team, and he was the first recipient of the prestigious Harlon Hill Trophy designating him the outstanding athlete in Division II;

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

That the Fiftieth Legislative Assembly takes great pride and pleasure in extending its heartiest congratulations to Jeff Bentrिम for his many superb achievements in the sport of collegiate football; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to Jeff Bentrिम.

Filed February 10, 1987

CHAPTER 830

HOUSE CONCURRENT RESOLUTION NO. 3056 (Tollefson)

NONPROFIT ORGANIZATION CONTRIBUTIONS STUDY

A concurrent resolution directing the Legislative Council to study methods to encourage contributions to nonprofit organizations in North Dakota.

WHEREAS, in these days of diminishing ability of government to provide the many kinds of services to people that are beneficial and useful, the user of these services must turn to other means of aid--the nonprofit charitable organization; and

WHEREAS, nonprofit charitable organizations depend upon dedicated, hardworking, unpaid, or woefully underpaid individuals for providing help to all of us in times of natural disaster and personal distress; and

WHEREAS, although hard working and dedicated individuals are the backbone of any charitable organization's good works, almost all such organizations need materials, supplies, and other items that can only be purchased with money; and

WHEREAS, the ability of generous and kindhearted people to provide needed materials, supplies, and other items, can be tried to the point where they are unable to make uncompensated donations of these materials and supplies to charitable organizations, no matter how worthy and deserving; and

WHEREAS, although many charitable contributions are deductible under federal income tax law, and the deduction is also available under our state's income tax law, there are some kinds of charitable projects that particularly benefit this state and deserve a special encouragement in the form of additional state income tax deduction or credit, or other tax consideration, such as lower property taxes;

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

That the Legislative Council study methods to encourage contributions to nonprofit organizations in this state, including income tax deductions and credits, property tax credits or exemptions, and other incentives, and defining what organizations should be eligible to receive contributions encouraged by such 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 831

HOUSE CONCURRENT RESOLUTION NO. 3057 (Meyer, Mertens, Klundt, Gates)

GROUP CHILD TREATMENT FACILITY STUDY

A concurrent resolution directing the Legislative Council to study the financing, type, and potential location of group or residential child treatment facilities needed for foster care or educational placements.

WHEREAS, over sixty foster care and boarding care children are placed in out-of-state group or residential treatment facilities each year; and

WHEREAS, over one million dollars each year is spent as a result of placing these children in out-of-state child treatment facilities; and

WHEREAS, these funds would be better spent in developing child treatment facilities within the state of North Dakota; and

WHEREAS, there would be an immediate financial benefit to the state, counties, and local school districts if these children were placed in facilities within North Dakota; and

WHEREAS, child and family unification is more easily accomplished when a child is placed in a proximity closer to the child's home; and

WHEREAS, it is more effective to place children in the least restrictive setting; and

WHEREAS, a demonstration project creating such a facility could be established with proper records maintained as to program and cost effectiveness, and the Departments of Public Instruction and Human Services could jointly plan for the administration and operation of the demonstration facility; and

WHEREAS, a comprehensive treatment plan is more easily established and carried out when the educational and residential components are under one administration;

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

That the Legislative Council study the financing, type, and potential location of group or residential child care treatment facilities needed in North Dakota for children currently placed in foster care or boarding care facilities by the Department of Human Services or county social service boards or in boarding care facilities by a local school district in accordance with rules and regulations of the Department of Public Instruction; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 832

HOUSE CONCURRENT RESOLUTION NO. 3058 (Hoffner, Hill, C. Nelson, Myrdal)

STUDENT TESTING AND REMEDIAL PROGRAMS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of developing a program for competency testing of elementary and secondary students and of providing remedial programs for students who need assistance mastering basic skills.

WHEREAS, it is the responsibility of the state to ensure that all students receive an education; and

WHEREAS, many students, whose educational attainment level is below the level that is appropriate for children of their age, are educationally deprived; and

WHEREAS, the state could require testing of all children in the areas of mathematics, reading, and writing skills in elementary and secondary schools on a periodic basis to identify those students who are educationally deprived; and

WHEREAS, standardized test scores, informal diagnosis, records of academic performance, and observations by professional staff are factors that should be used to identify educationally deprived children; and

WHEREAS, a program to provide remedial assistance to individual students who are educationally deprived would assist those children in reaching or exceeding the levels of educational attainment that is appropriate for those children;

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

That the Legislative Council study the feasibility and desirability of implementing a program for competency testing of elementary and secondary students in the areas of mathematics, reading, and writing skills and of providing remedial programs to educationally deprived students; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 833

HOUSE CONCURRENT RESOLUTION NO. 3059
(Representatives Hoffner, Opedahl)
(Senator W. Meyer)

OIL TAX REVENUE STUDY

A concurrent resolution directing the Legislative Council to study methods of stabilizing receipts from taxes imposed on oil production.

WHEREAS, volatile fluctuations in oil prices in recent years have seriously affected North Dakota industry and state government; and

WHEREAS, events of the past decade have demonstrated the hazards of dependence of state revenues and expenditures on oil prices and production; and

WHEREAS, mineral resources of the state are held in trust for future generations and depletion of these resources can only benefit North Dakota in the future if a portion of oil and gas tax revenues is set aside for future needs; and

WHEREAS, designation of a portion of oil and gas tax revenues, at times of high oil and gas tax revenue receipts, for deposit in a fund for offsetting harmful effects of decreased oil and gas tax revenues in times of low oil and gas tax revenue receipts could serve to stabilize revenue and budget considerations of state government and may provide the additional benefit of offsetting harmful effects to the state in general;

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

That the Legislative Council study methods by which a portion of oil tax revenues received at times of high oil prices and production could be preserved for future use and study methods to establish standards for future use of such revenues with a goal of stabilizing state revenues and expenditures and benefiting the state in general; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 834

HOUSE CONCURRENT RESOLUTION NO. 3060
(Representatives Hoffner, Hill, C. Williams, Klundt)
(Senator Heinrich)

SMALL SCHOOLS STUDY

A concurrent resolution directing the Legislative Council to study small but necessary schools to determine what needs to be done to capitalize upon the strengths as well as correct the deficiencies of those schools.

WHEREAS, the state has a vital interest in ensuring that state funds for education are used in the most efficient way to improve the quality of education; and

WHEREAS, of the approximately 310 school districts in this state, 118 operate high schools with fewer than 74 students and 84 of the high school districts with fewer than 74 students operate within 15 miles of another high school unit; and

WHEREAS, in studying the cost effectiveness of the small schools in relation to the quality of education provided by those schools, it is necessary to consider the enrollment in small schools the credentials of teachers in small schools; the course offerings and course content provided by small schools; the school facilities, equipment, and specialized services available in small schools; the test scores of pupils attending small schools; and the college candidates or graduates that attended small schools; and

WHEREAS, small schools can be as excellent and productive as schools anywhere in the nation, but deliberate actions may be necessary to build on the strengths of those schools; and

WHEREAS, small schools have historically shared problems such as recruiting highly competent teachers and administrators, securing needed capital and operating funds, and compensating for the inherent isolation and population sparsity of rural areas; and

WHEREAS, small schools have many unique characteristics that defy quantitative analyses or statistical description such as a less pressured environment; the spirit of cooperation; the opportunity for leadership development; and the less formal interaction among students, staff, and parents; and

WHEREAS, small school consolidation and school district reorganization have been supported by policy makers in the education fields; and

WHEREAS, nearly every state has enacted legislation which either mandates or encourages some degree of consolidation and reorganization in small school systems with the intent that consolidation or reorganization will result in more economical and efficient schools; and

WHEREAS, this state should consider providing fiscal incentives to small schools to encourage consolidation or reorganization, if appropriate; and

WHEREAS, for some small schools it may be more sensible to devise creative ways of bringing resources to the children rather than forcing the children to go long distances for those resources; and

WHEREAS, consolidation or reorganization for some small schools may not be educationally advantageous; and

WHEREAS, it may be appropriate for the state to offer small schools a full range of technical assistance services directed at improving those schools; and

WHEREAS, possible alternatives to consolidation and reorganization include regionalizing expensive programs such as vocational education or special education; providing support services by regional units to schools and districts that want to remain small; establishing a teacher corps system using special-subject teachers, paraprofessionals, teaching assistants, and tutors to compensate for instructional weaknesses in small schools; encouraging voluntary cooperative agreements among schools for the sharing of teachers and other services; developing a new system of delivery for educational services and programs; and encouraging the use of advanced technologies for the delivery of educational services;

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

That the Legislative Council study the role of small but necessary elementary and secondary schools to determine what needs to be done to capitalize upon the strengths as well as to correct the deficiencies of those schools; and

BE IT FURTHER RESOLVED, that the Legislative Council review the findings and recommendations of the small schools task force of the Department of Public Instruction; 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-first Legislative Assembly.

CHAPTER 835

HOUSE CONCURRENT RESOLUTION NO. 3062
(Representatives G. Berg, Nicholas, Kingsbury)
(Senators Nelson, Langley)
(Approved by the Committee on Delayed Bills)

FARM CREDIT ADMINISTRATION TO AID FARMER

A concurrent resolution urging the Farm Credit Administration to adopt debt restructuring initiatives and develop lending programs and policies to aid farmers who are established in agriculture.

WHEREAS, many farmers and ranchers in North Dakota and throughout the entire United States are faced with the real possibility of foreclosure on real estate and other farm assets; and

WHEREAS, in many cases, agricultural producers owe debts to lenders that exceed the current values of the land and other agricultural assets securing the loans; and

WHEREAS, lenders will generally receive no more than the current value of land and other agricultural assets if the land and assets are foreclosed upon and sold to a new purchaser; and

WHEREAS, lenders are offering financing rates as low as 4.9 percent to purchasers of agricultural properties that lenders have acquired through foreclosure proceedings; and

WHEREAS, the previous owner of the property, in many cases, would have been able to show repayability of obligations if payments had been based on the current value of the land and on the concessionary rates of interest offered to the new purchasers of acquired properties; and

WHEREAS, sales of acquired property are generally made to investors, speculators, or farmers who are expanding their current operations; and

WHEREAS, these sales accelerate the depopulation of rural North Dakota and threaten the future survival of the entire rural communities;

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

That the Fiftieth Legislative Assembly urges the Farm Credit Administration to adopt debt restructuring programs and policies that give existing farmers and ranchers the same repayment terms that are currently being offered to purchasers of acquired properties; and

BE IT FURTHER RESOLVED, that the Farm Credit Administration develop programs and policies to give beginning farmers priority and attractive financing terms to purchase acquired properties in cases where debt restructuring is not workable and the lenders have acquired the real estate involved; and

BE IT FURTHER RESOLVED, that farmers having existing operations be given priority over investors and speculators; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the chairman of the Farm Credit Administration, the board of directors of the St. Paul Farm Credit Services, the chairmen of the United States Senate and House Committees on Agriculture, each member of the North Dakota Congressional Delegation, and the Governor of North Dakota.

Filed March 31, 1987

CHAPTER 836

HOUSE CONCURRENT RESOLUTION NO. 3063 (Kloubec)

UNEMPLOYMENT STUDY

A concurrent resolution directing the Legislative Council to study the makeup of the advisory councils appointed under the North Dakota unemployment insurance law, to monitor the status of the unemployment insurance trust fund reserve during the interim, and to examine other approaches to the problem of unemployment.

WHEREAS, under the North Dakota unemployment insurance law, Job Service North Dakota is required to appoint a state advisory council and local advisory councils to assist Job Service North Dakota in formulating policies and discussing problems relating to the administration of Job Service North Dakota, and to assure impartiality and freedom from political influence in the solution of those problems; and

WHEREAS, the advisory councils are required to be made up of an equal number of employer representatives and employee representatives, as well as members of the general public; and

WHEREAS, the advisory councils are charged with the responsibility of giving advice and aid to Job Service North Dakota so that appropriate steps may be taken to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and guidance; to investigate and otherwise assist in the establishment of reserves to be used for public works to be built in times of business depression and unemployment; and to promote the reemployment of unemployed workers throughout the state in every feasible way; and

WHEREAS, the unemployment insurance trust fund reserve in North Dakota, as in most states, is based on contributions entirely paid by the employers, on the basis of the covered payroll of the employers; and

WHEREAS, although much attention is paid to the status of the unemployment insurance trust fund, other methods of reducing unemployment deserve careful consideration, such as retraining,

workfare programs and day care centers, adult learning centers, and other job training and employment services;

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

That the Legislative Council study the makeup of the advisory councils to Job Service North Dakota; monitor the stability of the unemployment insurance trust fund reserve, paying particular attention to any significant increases or decreases in that fund's level; and examine other approaches and solutions to problems of unemployment, such as retraining, workfare programs and day care centers, adult learning centers, and other job training and employment services; 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-first Legislative Assembly.

Filed March 26, 1987

CHAPTER 837

HOUSE CONCURRENT RESOLUTION NO. 3064 (Meyer)

MONETARY COMMISSION

A concurrent resolution urging the Congress of the United States to enact legislation to terminate all fractional reserve banking practices in the United States and to establish the United States Monetary Commission.

WHEREAS, the rights of the citizens of the United States to economic freedom, domestic tranquility, and prosperity without excessive interest and taxation should not be abridged nor denied by any private corporation using any debt instrument or note as a basis for credit and currency; and

WHEREAS, by passage of the Federal Reserve Act of 1913 [38 Stat. 251; 12 U.S.C. 221], Congress established the Federal Reserve System, which is composed of a Board of Governors, 12 regional Federal Reserve Banks and member banks, the Federal Open Market Committee, and several councils; and

WHEREAS, the Federal Reserve System operates on a fractional reserve banking basis and possesses wide discretionary authority to issue federal reserve notes, determine the cost and availability of money and credit, and to direct and influence the monetary policy of the United States; and

WHEREAS, the termination of fractional reserve banking and the establishment of the United States Monetary Commission would ensure an equitable and sound monetary policy;

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

That the Fiftieth Legislative Assembly urges the Congress of the United States to enact legislation to terminate all fractional reserve banking practices in the United States and to establish the United States Monetary Commission; and

BE IT FURTHER RESOLVED, that the legislation provide for the initiation of a United States Treasury Credit Monetary System, and

grant the United States Treasury, when authorized by the United States Monetary Commission, the sole and exclusive power to create all money and establish the value thereof; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed April 10, 1987

CHAPTER 838

HOUSE CONCURRENT RESOLUTION NO. 3066 (Representatives Hoffner, Lautenschlager, Hamerlik) (Senators Mathern, Peterson)

ADULT EDUCATION FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the funding of adult basic and secondary education, to review the various alternative methods of funding this type of education, and to arrive at a method of funding adult basic and secondary education that is secure and stable.

WHEREAS, approximately 58 percent of the funding for the adult basic and secondary education program is from federal sources and approximately 42 percent of the funding is from state sources; and

WHEREAS, these sources of funding have not been stable in the past and future funding of this program is uncertain; and

WHEREAS, many adults in this country are functionally illiterate and lack basic skills beyond a fourth grade level; and

WHEREAS, in North Dakota, approximately 121,000 adults over 25 years of age have less than a high school education, 65,800 have less than an eighth grade education, and 12,000 to 13,000 have less than a fourth grade education; and

WHEREAS, as workers continue to be replaced by job technology and as more adults change careers, there is a growing pool of workers who lack the basic skills to learn new jobs; and

WHEREAS, the adult basic and secondary education program provides instructional services to adults below the college level who do not have basic academic skills, a high school diploma, or career and job skills; and

WHEREAS, the state should provide a secure and stable source of funding for adult basic and secondary education that would enable the program to continue to meet the existing demand for services and programs and to meet the growing need for such programs;

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

That the Legislative Council study the funding of the adult basic and secondary education program to determine a method of funding that is secure and stable and will enable the program to meet the existing and growing need for adult basic and secondary education programs; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 839

HOUSE CONCURRENT RESOLUTION NO. 3067 (Rice)

AGRICULTURAL RESEARCH DISSEMINATION STUDY

A concurrent resolution directing the Legislative Council to study the research services provided in this state by various entities to determine how resources can be most efficiently used to enhance and preserve the delivery of research information available to farmers and agribusinesses in this state.

WHEREAS, the various interest groups in agricultural industries place a high priority on research and marketing of agricultural products, especially considering the current economic climate in this state and in the nation; and

WHEREAS, the Commissioner of Agriculture, the experiment stations and extension services of North Dakota State University, the Economic Development Commission, the Agricultural Products Utilization Commission, and the Greater North Dakota Association collectively promote and support research designed to enhance farmers' profits; and

WHEREAS, the North Dakota Agricultural Statistics Service provides vital research statistics and information to farmers and agribusinesses in this state; and

WHEREAS, cooperative efforts among these organizations could maximize federal, state, and local resources;

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

That the Legislative Council study the research services provided in this state by various entities to determine how resources can be most efficiently used to enhance and preserve the delivery of research information available to farmers and agribusinesses in this state; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 840

HOUSE CONCURRENT RESOLUTION NO. 3068 (Hoffner, C. Nelson, Meyer, Gates, Wentz)

SCHOOL CORPORAL PUNISHMENT STUDY

A concurrent resolution directing the Legislative Council to study corporal punishment in schools.

WHEREAS, the use of corporal punishment in schools has been defined as punishment inflicted upon the body of a student to modify the student's behavior; and

WHEREAS, North Dakota does not prohibit the use of corporal punishment; and

WHEREAS, many states including North Dakota specifically allow the use of reasonable physical force by school authorities to restrict unruly students, to correct unacceptable behavior, and to maintain order necessary to conduct an educational program; and

WHEREAS, the courts have generally upheld the reasonable application of punishment in schools and have not found that such use is a violation of a student's right to due process; and

WHEREAS, New Jersey, Hawaii, Massachusetts, Maine, and Vermont specifically prohibit the use of corporal punishment in schools; and

WHEREAS, the prohibition of corporal punishment in schools may prevent school authorities from maintaining proper discipline in schools because they fear that the use of any type of punishment could lead to litigation; and

WHEREAS, alternatives to enacting a law that would prohibit the use of corporal punishment statewide which should be considered would be to allow individual school districts to establish their own policies regarding corporal punishment or to allow the Superintendent of Public Instruction to adopt rules regarding the use of corporal punishment;

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

That the Legislative Council study corporal punishment in schools and review the laws on corporal punishment in other states to determine whether the use of corporal punishment in schools should be prohibited or regulated at the state or local level; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 841

HOUSE CONCURRENT RESOLUTION NO. 3069
(Representatives Kloubec, Martinson, Skjerven)
(Senators Nelson, Lodoen, Satrom)

PUBLIC EMPLOYEE BENEFITS STUDY

A concurrent resolution directing the Committee on Public Employees Retirement Programs of the Legislative Council to evaluate health insurance benefits and other benefits administered by public employee retirement boards, and the investment practices and performances of those boards.

WHEREAS, the Legislative Council's Committee on Public Employees Retirement Programs has statutory jurisdiction to consider measures affecting public employees' retirement programs; and

WHEREAS, in past interims, this committee has reviewed bills affecting health insurance benefits and other employee benefits administered by retirement boards but has waived jurisdiction over most of them; and

WHEREAS, benefits other than retirement benefits comprise a significant portion of public employees' nonsalary compensation and many of these benefits administered by retirement boards are subject to change at the direction of those boards without legislative approval; and

WHEREAS, the investment practices and performance of the retirement boards and their funds are critical in determining the actuarial soundness of each of the funds and the actuarial margins from which benefit enhancements can be made;

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

That the Legislative Council's Retirement Committee study the health insurance benefits and other benefits administered by the various public employee retirement boards, and that it study the investment practices and performance of those boards, and that the Retirement Committee report on its deliberations to the Legislative Council; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 842

HOUSE CONCURRENT RESOLUTION NO. 3072 (Committee on Judiciary)

STATUTES OF LIMITATIONS STUDY

A concurrent resolution directing the Legislative Council to study the statutes of limitations in this state and the feasibility and desirability of shortening, lengthening, or otherwise modifying existing statutes of limitations.

WHEREAS, there are numerous statutes of limitations that apply to a wide variety of civil actions and criminal proceedings; and

WHEREAS, for various reasons there is increasing pressure to modify statutes of limitations to affect the time within which actions or proceedings may be commenced; and

WHEREAS, modifying statutes of limitations may substantially affect legal rights and claims;

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

That the Legislative Council study the statutes of limitations in this state and the feasibility and desirability of shortening, lengthening, or otherwise modifying existing statutes of limitations; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 843

HOUSE CONCURRENT RESOLUTION NO. 3073 (Representatives Oban, J. DeMers, Rydell) (Senator Mushik)

DEAF AND HEARING IMPAIRED STUDY

A concurrent resolution directing the Legislative Council to study services to deaf and hearing impaired children and adults, to examine the role of the North Dakota School for the Deaf in the provision of educational and rehabilitative services to the deaf, and to determine alternative methods of educating and rehabilitating the deaf in communities throughout the state.

WHEREAS, the state has a vital interest in ensuring that children and adults who are deaf or hearing impaired develop the ability to function as independently as possible; and

WHEREAS, many persons who are deaf or hearing impaired require educational, rehabilitative, and other services or assistance if they are to function independently; and

WHEREAS, it is the responsibility of the state to maintain a free and appropriate system of education in a least restrictive environment for handicapped students including those persons with hearing impairments; and

WHEREAS, Article IX, Section 12, of the Constitution of North Dakota locates the School for the Deaf at the city of Devils Lake; and

WHEREAS, less than two-tenths of one percent of North Dakota's population is currently committed to nonpenal institutions and a trend has been set in North Dakota for the deinstitutionalization of such persons and to provide for their education outside of institutional settings; and

WHEREAS, local cooperative special education programs have become increasingly effective in the education of children with low incidence handicaps; and

WHEREAS, state general fund appropriations for educating students enrolled at the North Dakota School for the Deaf are increasing;

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

That the Legislative Council study existing educational, rehabilitative, and other services to deaf children and adults in the state, examine the role of the North Dakota School for the Deaf in the provision of educational and rehabilitative services to the deaf, and determine alternative methods of educating and rehabilitating the deaf in communities throughout the state; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 844

HOUSE CONCURRENT RESOLUTION NO. 3074 (Representatives Oban, Rydell) (Senators Heinrich, Mushik)

BLIND AND VISUALLY IMPAIRED STUDY

A concurrent resolution directing the Legislative Council to study services to blind and visually impaired children and adults, to examine the role of the North Dakota School for the Blind in the provision of educational and rehabilitative services to the blind, and to determine alternative methods of educating and rehabilitating the blind in communities throughout the state.

WHEREAS, the state has a vital interest in ensuring that children and adults who are blind or visually impaired develop the ability to function as independently as possible; and

WHEREAS, most persons who are blind or visually impaired require educational, rehabilitative, and other services or assistance if they are to function independently; and

WHEREAS, it is the responsibility of the state to maintain a free and appropriate system of education in a least restrictive environment for handicapped students including those persons with visual impairments; and

WHEREAS, Article IX, Section 13, of the Constitution of North Dakota provides for the location of the School for the Blind at the city of Grand Forks or at such other location as may be determined by the Legislative Assembly; and

WHEREAS, less than two-tenths of one percent of North Dakota's population is currently committed to nonpenal institutions and a trend has been set in North Dakota for the deinstitutionalization of such persons and to provide for their education outside of institutional settings; and

WHEREAS, student enrollments at the North Dakota School for the Blind have been decreasing every year since 1975; and

WHEREAS, local cooperative special education programs have become increasingly effective in the education of children with low incidence handicaps; and

WHEREAS, state general fund appropriations for educating students enrolled at the North Dakota School for the Blind are increasing;

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

That the Legislative Council study existing educational, rehabilitative, and other services to blind children and adults in the state, examine the role of the North Dakota School for the Blind in the provision of educational and rehabilitative services to the blind, and determine alternative methods of educating and rehabilitating the blind in communities throughout the state; 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-first Legislative Assembly.

Filed April 2, 1987

CHAPTER 845

HOUSE CONCURRENT RESOLUTION NO. 3076 (Hamerlik, Schneider)

EXCLUSIONARY RULE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting administrative alternatives to the application of the exclusionary rule as it relates to search and seizure provisions of the North Dakota and United States Constitutions.

WHEREAS, the purported objective of the exclusionary rule is to deter improper or aberrant police methods by declaring that evidence obtained by such methods cannot be used against a defendant in a court of law; and

WHEREAS, the present articulation of circumstances under which the exclusionary rule is to be applied is confused and ever-changing and hinders law enforcement personnel in obtaining a knowledgeable understanding of search and seizure methods that are or may be deemed impermissible; and

WHEREAS, as a result of the application of the exclusionary rule, many persons who would otherwise be found guilty of violating the law are left free to further victimize the citizens of this state; and

WHEREAS, an administrative process aimed at the proper education of law enforcement personnel and the effective, prompt disciplining of improper police investigative methods may allow the courts to suspend the application of the exclusionary rule and thus may serve the dual purpose of ensuring proper police methods and allowing true and just results in criminal trials;

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

That the Legislative Council study the feasibility and desirability of adopting administrative alternatives to the application of the exclusionary rule; 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-first Legislative Assembly.

Filed March 31, 1987

CHAPTER 846

HOUSE CONCURRENT RESOLUTION NO. 3077 (Wentz, Frey, Gorman, J. DeMers)

EMPLOYMENT BENEFITS STUDY

A concurrent resolution directing the Legislative Council to study the differences in employee benefits between part-time and full-time employment in the private sector.

WHEREAS, an increasing portion of available work in the private sector is part-time employment; and

WHEREAS, in many circumstances a part-time employee is paid a relatively low wage and is not given any optional employee benefits and in other cases is not given employee benefits in proportion to the employee's work hours; and

WHEREAS, employment statistics indicate women are disproportionately represented in part-time jobs, as reflected in a recent report of the North Dakota Commissioner of Labor, showing that over 60 percent of part-time jobs are held by women, and that over 40 percent of working women work in part-time jobs while only about 20 percent of working men have part-time jobs; and

WHEREAS, many part-time employees are the heads of their households and must nonetheless struggle to make ends meet in one or more part-time jobs; and

WHEREAS, a worker may hold more than one part-time job and work more hours in a week than the typical full-time worker, yet because none of that worker's jobs is a full-time job, that worker is often denied access to important employee benefits, such as health and accident insurance for the worker and the worker's family, sick leave, paid vacation, holiday pay, and other benefits; and

WHEREAS, many factors not necessarily overtly discriminatory, such as numbers of available workers, ultimate resale value of work product, and other marketplace effects, are important in determining differences in compensation among kinds of jobs;

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

That the Legislative Council study the differences in employee benefits between part-time and full-time employment in the private sector and the extent to which employers may be hiring part-time workers to avoid the paying of economic benefits; 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-first Legislative Assembly.

Filed March 18, 1987

CHAPTER 847

HOUSE CONCURRENT RESOLUTION NO. 3078 (Wald, Hoffner)

DEINSTITUTIONALIZATION FISCAL ASPECTS STUDY

A concurrent resolution directing the Legislative Council to study fiscal aspects of the office of the court monitor which was created by the federal district court in the case concerning deinstitutionalization of developmentally disabled persons.

WHEREAS, as part of its August 31, 1982, decision in the matter of Association for Retarded Citizens of North Dakota v. Olson, the United States District Court created the position of court monitor; and

WHEREAS, in its implementation order of March 7, 1984, the district court described the duties and responsibilities of the court monitor which include reviewing and reporting to the court on progress towards implementation of the court's order, evaluating staffing requirements necessary to implement the court's orders, and making recommendations to the court; and

WHEREAS, the district court, without precise definition, directed that the state pay all fees and expenses of the monitor, assistants, and appropriate consultants; and

WHEREAS, the Legislative Assembly has appropriated substantial funds each biennium for the payment of fees and expenses billed to the state by the court monitor; and

WHEREAS, since the scope of allowable fees, expenses, and compensable activities is uncertain, the Legislative Assembly should take all necessary and appropriate steps to ensure the propriety and necessity of those fees, expenses, and activities;

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

That the Legislative Council study the fiscal aspects of the office of the court monitor which was created by the federal district court with emphasis on a thorough review of allowable fees and expenses, fee schedules, activities undertaken by the court

monitor, the general authority of the court monitor, the establishment of a method of accountability, and other measures deemed appropriate to ensure the wise and prudent expenditure of funds appropriated by the Legislative Assembly; 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-first Legislative Assembly.

Filed April 2, 1987

CHAPTER 848

HOUSE CONCURRENT RESOLUTION NO. 3079
(Wentz, Kuchera)

ELECTRONIC MEDIA COURSE STUDY

A concurrent resolution directing the Legislative Council to study the potential benefits to be derived from offering courses through the use of electronic media, including satellite dishes, cable and public television, video cassettes, and video and telephone audiosystems, and the methods available to implement a system of telecommunications.

WHEREAS, the students in the Mayville-Portland School District are able to enroll in German courses offered through a program beamed in by satellite; and

WHEREAS, many school districts are not fiscally able to provide courses in advanced, specialized, foreign language, or art enrichment classes; and

WHEREAS, many of the courses that are not available would be of great benefit to students and would enable some school districts to meet accreditation standards; and

WHEREAS, it is now technically possible to combine satellite or cable technology, telephone lines, and computers to build a system of instruction that is interactive and affordable; and

WHEREAS, the use of electronic media would enable school districts to provide advanced mathematics and science courses, foreign language courses, art enrichment courses, or other specialized courses to students that would otherwise be unavailable to them and that may reduce or stabilize school district operational costs; and

WHEREAS, one of the ways an electronic media program could be implemented is by requiring the Superintendent of Public Instruction and the Commissioner of Higher Education to cooperate in establishing a comprehensive system of telecommunications and electronic media that would make these courses available and accessible to all schools; and

WHEREAS, it may be possible to coordinate with businesses in the development and funding of a system of telecommunications among school districts; and

WHEREAS, the establishment of a system of telecommunications may bring new businesses and new jobs into this state;

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

That the Legislative Council study the feasibility and desirability of assisting school districts in obtaining access to advanced, specialized, foreign language, art enrichment, or other courses through the use of electronic media, and the methods available to implement a system of telecommunications; and

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

Filed April 2, 1987

CHAPTER 849

HOUSE CONCURRENT RESOLUTION NO. 3080 (Strinden, Kloubec, Mertens, Goetz)

STATE HOSPITAL STUDY

A concurrent resolution directing the Legislative Council to study the present and future role and function of the State Hospital in the provision of services to the mentally ill and the chemically dependent and its relationship to private and public agencies in the community providing similar services.

WHEREAS, the State Hospital serves as the only public institution in North Dakota for the care and treatment of the mentally ill and the chemically dependent;

WHEREAS, the resident population of the State Hospital has decreased in the past two decades as a result of deinstitutionalization efforts;

WHEREAS, approximately sixty percent of all admissions and readmissions to the State Hospital are chemically dependent patients;

WHEREAS, North Dakota has been developing community-based services for the mentally ill and the chemically dependent which may have impacted the resident population of the State Hospital;

WHEREAS, the North Dakota Commission on Mental Health Services has recommended in its final report and recommendations in December 1986 that the State Hospital should be a residential treatment facility for specialized populations of the mentally ill, including the chemically dependent, and serve as one component of the mental health delivery system; and

WHEREAS, no state plan presently exists providing direction for the future role and function of the State Hospital and its place in the state mental health delivery system;

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

That the Legislative Council study the organization, administration, and services provided at the State Hospital to determine its future role, function, and relationship to private and public community agencies providing services to the mentally ill and chemically dependent, and to examine alternatives to hospitalization of patients at the State Hospital; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 850

HOUSE CONCURRENT RESOLUTION NO. 3081
(Representatives Dalrymple, Kingsbury)
(Senator Tallackson)
(Approved by the Committee on Delayed Bills)

OUTSTANDING YOUNG FARMER

A concurrent resolution congratulating Tom Campbell on being named one of the nation's four outstanding young farmers of 1987 by the United States Jaycees.

WHEREAS, the United States Jaycees give awards to the nation's four outstanding young farmers based on criteria including progress in an agricultural career, extent of soil and water conservation practices, and contributions to the well-being of the state, community, and nation; and

WHEREAS, Tom Campbell farms 4,750 acres in wheat, barley, and potatoes near Grafton, North Dakota; and

WHEREAS, he is currently a one-third partner in Tri-Campbell, Inc., a potato brokerage firm, and has added to the value of his product by founding his own potato chip company called Grandma Campbell's Snacks; and

WHEREAS, he is active in the Red River Valley Potato Grower's Association, the Walsh County Farm Bureau, and the Walsh County Fair Board; and

WHEREAS, he was named the Outstanding North Dakota Farmer by the North Dakota Jaycees in October 1986; and

WHEREAS, he was one of four men chosen from a field of 41 state winners and was honored at the annual Outstanding Young Farmer Award Congress in Moline, Illinois, on the occasion of the 150th Anniversary of the John Deere Company; and

WHEREAS, he is the eleventh North Dakotan to receive this award;

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

That the Fiftieth Legislative Assembly of the state of North Dakota extends its sincere and hearty congratulations to Tom Campbell of Grafton, North Dakota, on being named one of the nation's four outstanding young farmers of 1987 by the United States Jaycees; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Tom Campbell and to the Grafton Jaycees.

CHAPTER 851

HOUSE CONCURRENT RESOLUTION NO. 3083
(Representatives Hoffner, Kloubec)
(Senator Nething)
(Approved by the Committee on Delayed Bills)

MAIL ORDER SALES TAX IMPOSITION

A concurrent resolution urging the Congress of the United States to enact legislation to allow imposition of state sales and use taxes on mail order sales to purchasers within a state by out-of-state mail order companies.

WHEREAS, in 1967 the Supreme Court of the United States, in its decision in National Bellas Hess v. Illinois Department of Revenue, ruled that states may not require collection of sales taxes or use taxes on mail order sales to residents of the state by certain out-of-state mail order companies; and

WHEREAS, the Supreme Court of the United States has acknowledged that the Congress of the United States has power to overturn its ruling and require firms to collect and remit states' sales and use taxes; and

WHEREAS, out-of-state mail order companies selling products within a state are in direct competition with state retailers; and

WHEREAS, state retailers contribute to the support of local governmental and educational services through payment of state and local taxes while out-of-state retailers contribute nothing to local governmental and educational services but compete in the same market with a considerable competitive advantage provided by the Supreme Court decision exempting them from sales and use taxes; and

WHEREAS, the Advisory Commission on Intergovernmental Relations estimates that in 1985 states lost nearly \$1.5 billion in sales and use tax revenue by being prohibited from enforcing collection of sales and use taxes on certain out-of-state retailers, and it is likely that this revenue loss will continue to grow unless the United States Congress takes remedial action;

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

That the Fiftieth Legislative Assembly urges the Congress of the United States to approve legislation to allow imposition of state sales and use taxes on mail order sales to purchasers within a state by out-of-state mail order companies; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairmen of the House Committee on Ways and Means and the Senate Committee on Finance, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 1987

CHAPTER 852

HOUSE CONCURRENT RESOLUTION NO. 3084
(Strinden)
(Approved by the Committee on Delayed Bills)

PROSPECTIVE MEDICAID PAYMENT STUDY

A concurrent resolution directing the Legislative Council to study the Department of Human Services' establishment of a prospective Medicaid payment system.

WHEREAS, the Fiftieth Legislative Assembly is considering House Bill No. 1448 requiring the Department of Human Services to establish prospective case mix Medicaid payment rates for long-term care facilities, for rate years beginning on or after January 1, 1990; and

WHEREAS, House Bill No. 1448 prohibits long-term care facilities from charging private pay residents rates which exceed rates approved by the Department of Human Services for medical assistance recipients; and

WHEREAS, the Department of Human Services will be conducting research on the implementation of House Bill No. 1448 and will be developing the rate structure during the 1987-89 interim; and

WHEREAS, the implementation of House Bill No. 1448 to equalize rates, provide preadmission assessment, and develop a case mix system may have a fiscal impact on the state of North Dakota for the 1989-91 and subsequent bienniums; and

WHEREAS, many current laws, rules, and regulations have fiscal impact on the costs of long-term care; and

WHEREAS, statutory changes may be necessary as a result of the research and study conducted relating to House Bill No. 1448;

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

That the Legislative Council study the Department of Human Services' development of a prospective case mix reimbursement based on resident needs; and

BE IT FURTHER RESOLVED, that the Department of Human Services and other agencies having an impact on long-term care are urged to provide such assistance and information to the Legislative Council or a designated committee of the Council as it may request in conducting the study; 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-first Legislative Assembly.

Filed April 1, 1987

CHAPTER 853

HOUSE CONCURRENT RESOLUTION NO. 3085
(Watne)
(Approved by the Committee on Delayed Bills)

PESTICIDE USE HISTORY STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of requiring a history of pesticides applied to agricultural property to be provided to owners, tenants, and purchasers of the property.

WHEREAS, the use of pesticides and the kinds of pesticides used to control pests and diseases has been increasing over the past several years; and

WHEREAS, the use of some agricultural pesticides adversely affects future crops grown on the property on which the pesticides have been applied; and

WHEREAS, if the user of the pesticide provided notice of the kind of pesticides used to the persons who intend to plant crops on the property in the future, the person planting the crops would be able to make informed decisions as to the type of crop to plant;

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

That the Legislative Council study the feasibility and desirability of requiring a history of pesticides applied to agricultural property be provided to landowners, tenants, and purchasers of the property; 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-first Legislative Assembly.

Filed April 2, 1987

CHAPTER 854

HOUSE CONCURRENT RESOLUTION NO. 3086
(Representatives G. Berg, Mertens, Nicholas)
(Senators Axtman, Adams)
(Approved by the Committee on Delayed Bills)

SWAMPBUSTER AND SODBUSTER EXEMPTION URGED

A concurrent resolution urging the United States Secretary of Agriculture to adopt regulations that exempt agricultural lands cropped in any year between 1981 and 1985 from the swampbuster and sodbuster provisions of the Food Security Act of 1985 and which exempt any land farmed for three consecutive years from the swampbuster provision of the Food Security Act of 1985.

WHEREAS, congressional intent of the swampbuster provision of the Food Security Act of 1985 was to prevent the draining of excessively wet areas that could not be farmed without being drained; and

WHEREAS, congressional intent of the sodbuster provision of the Food Security Act of 1985 was to prevent highly erodible lands from being brought into production; and

WHEREAS, the swampbuster and sodbuster provisions of the Food Security Act were not intended to prevent a farmer from draining or more efficiently managing land that is currently being farmed, or to put farmers out of business;

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

That the Fiftieth Legislative Assembly urges the United States Secretary of Agriculture to adopt regulations that exempt lands that have been cropped in any year between 1981 and 1985 from the swampbuster and sodbuster provisions of the Food Security Act of 1985; and

BE IT FURTHER RESOLVED, that the Fiftieth Legislative Assembly urges the United States Secretary of Agriculture to adopt regulations that exempt any land farmed for three consecutive years from the swampbuster provision of the Food Security Act of 1985; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the United States Secretary of Agriculture, the chairmen of the United States Senate and House Committees on Agriculture, to each member of the North Dakota Congressional Delegation, and to the Governor of this state.

Filed April 2, 1987

CHAPTER 855

HOUSE CONCURRENT RESOLUTION NO. 3087
(Representatives Strinden, Mertens)
(Senators Heigaard, Olson)
(Approved by the Committee on Delayed Bills)

BRYNHILD HAUGLAND DAY

A concurrent resolution commending Representative Brynhild Haugland for her service to the Legislative Assembly and to the people of the state of North Dakota, and designating March 18, 1987, as Brynhild Haugland Day.

WHEREAS, Brynhild Haugland was first elected to the North Dakota House of Representatives in 1938 and has served since that time as a state representative, which is the longest service as a state representative of anyone currently serving in that capacity in the United States; and

WHEREAS, Representative Haugland has served as chairman of the House Committee on Human Services and Veterans Affairs during 20 of her 25 legislative sessions of service; and

WHEREAS, her many legislative accomplishments include enabling legislation for multicounty health units, establishment of the North Central Experiment Station, child abuse reporting requirements, authority to parole eligible Industrial School students to foster homes, and enabling legislation for opening San Haven to patients from the Grafton State School; and

WHEREAS, her accomplishments outside the legislative arena include service as a member of the board of directors of the International Peace Garden since 1953, membership on the board of the State University of North Dakota-Minot Alumni Association and College Foundation, charter membership in the Eureka Homemakers Club, and membership in the Quota Club, Minot Business and Professional Women's Club, Delta Kappa Gamma, Farm Bureau, and Farmers Union and membership on the Ward County Zoning Commission and on the Minot Planning Commission; and

WHEREAS, recognition for her accomplishments include Minot State College Alumni Golden Award for Outstanding Service, Sertoma's Service to Mankind Award, the North Dakota Public Health Association's Merit Award for Outstanding Service to Public Health, the State Bar Association's Liberty Bell Award, and the North Dakota Mental Health Association's Distinguished Service Award; and

WHEREAS, her achievements are self-described as "any good thing can be accomplished if you aren't particular about who gets the credit";

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

That the Fiftieth Legislative Assembly commends Representative Brynhild Haugland for her service to the Legislative Assembly and to the people of the state over the years; and

BE IT FURTHER RESOLVED, that March 18, 1987, be designated as Brynhild Haugland Day in recognition of her achievements and her dedication to the public welfare; and

BE IT FURTHER RESOLVED, that the Secretary of State present a copy of this resolution to Representative Haugland.

Filed March 19, 1987

CHAPTER 856

HOUSE CONCURRENT RESOLUTION NO. 3088
(Representatives Haugen, Opedahl, Anderson)
(Senators Yockim, Bakewell)
(Approved by the Committee on Delayed Bills)

GAME AND FISH DEPARTMENT URGED TO CONCILIATE

A concurrent resolution urging the State Game and Fish Department to adopt a more conciliatory posture in dealing with the Lewis and Clark Mutual Aid Association and its members regarding lease from the State Game and Fish Department of certain lands owned by the United States Army Corps of Engineers.

WHEREAS, certain lands acquired in the 1950s by the United States Army Corps of Engineers from members of the present Lewis and Clark Mutual Aid Association were purchased with the express understanding that the former owners would be allowed to continue to operate these former irrigated units; and

WHEREAS, some of these units are an important source of subirrigated hay and fodder supplementing upland grass and hay for northwestern North Dakota; and

WHEREAS, after the sale of the land to the Corps of Engineers the Lewis and Clark Mutual Aid Association leased the land from the Corps of Engineers under a master lease and subleased the land to the former owners; and

WHEREAS, the State Game and Fish Department has leased all Lewis and Clark Mutual Aid Project lands from the United States Army Corps of Engineers and the State Game and Fish Department has adopted certain policies with regard to this land which the former landowners and the Lewis and Clark Mutual Aid Association view as a breach of faith of the original agreements under which the landowners sold the lands in question to the United States Army Corps of Engineers; and

WHEREAS, it appears that the State Game and Fish Department could accommodate the concerns of the former landowners and operators and the Lewis and Clark Mutual Aid Association and could meet the spirit of the original intent of the agreements between landowners and the United States Army Corps of Engineers without undue interference with the goals established by the State Game and Fish Department for use of the land in question; and

WHEREAS, it should be the objective of state agencies to serve the needs and desires of state citizens when the objectives of the state and its citizens can be addressed while at the same time resolving the existing controversy to the satisfaction of those concerned;

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

That the State Game and Fish Department is urged to adopt a more conciliatory posture and to address the concerns of former owners and present operators of said lands and the Lewis and Clark Mutual Aid Association, including adoption of the following policies:

1. That the State Game and Fish Department change its permit system for the lands in question to a lessor and lessee relationship with the leases running continually from year to year;
2. That the State Game and Fish Department make every effort to allow lessees to participate in Agricultural Stabilization and Conservation Service programs to allow the advantages of such programs to be gained by the State Game and Fish Department and the lessees;
3. That the State Game and Fish Department allow reasonable oil development on the lands in question and allow mineral owners and lessees an opportunity to participate in decisions regarding oil development which affect them economically;
4. That the State Game and Fish Department allow lessees on the lands in question to share in surface damages from oil and gas development applying the same guidelines and policies established by the Board of University and School Lands for its lessees;
5. That the State Game and Fish Department recognize that when operations are conducted on the lands in question by two or more persons jointly and one or more of the persons retires or ceases operations the remaining persons are entitled to the option of continuing the operation and that, in instances where this option has not been recognized, efforts should be made to restore the rights of affected parties in line with this policy;
6. That if the State Game and Fish Department uses its income from lands within the area in question, the usage must be approved by legislative appropriation;
7. That the State Game and Fish Department work with the board of directors of the Lewis and Clark Mutual Aid

Association on a continuing basis to establish policies and procedures for the operation of the units that were in the project and to affect the intent of this resolution; and

BE IT FURTHER RESOLVED, that meetings between representatives of the State Game and Fish Department and representatives of the Lewis and Clark Mutual Aid Association be held as soon and as frequently as necessary to accomplish the purposes of this resolution; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the State Game and Fish Commissioner and the Lewis and Clark Mutual Aid Association.

Filed April 6, 1987

CHAPTER 857

HOUSE CONCURRENT RESOLUTION NO. 3090
(Representatives Strinden, Mertens, Kloubec, Peterson)
(Senators Heigaard, Olson)
(Approved by the Committee on Delayed Bills)

BRYNHILD HAUGLAND ROOM

A concurrent resolution designating the Dakota Room as the Brynhild Haugland Room.

WHEREAS, the Legislative Assembly has a tradition of recognizing former or current members for extraordinary public service; and

WHEREAS, Representative Brynhild Haugland was first elected to the North Dakota House of Representatives in 1938 and has the longest continuous service as a state representative of anyone currently serving in that capacity in the United States; and

WHEREAS, among her many legislative accomplishments are establishment of the North Central Experiment Station, authority to parole Industrial School students to foster homes, and child abuse reporting requirements, as well as enabling legislation for multicounty health units and opening San Haven to patients from the Grafton State School; and

WHEREAS, her public service includes being a member of the Ward County Zoning Commission, Minot Planning Commission, Board of Directors of the International Peace Garden, Quota Club, Business and Professional Women's Club, Board of Directors of the State University of North Dakota-Minot Alumni Association and College Foundation, Delta Kappa Gamma, Farm Bureau, Farmers Union, and the National Retired Teachers Association, as well as being a charter member of the Eureka Homemakers Club and the vice president of the International Peace Garden, Inc., and being named an honorary member of the Uniformed Fire Fighters of North Dakota in 1976; and

WHEREAS, recognition for her accomplishments include receiving Minot's Woman of the Year for 1956 and 1971, the Minot State College Alumni Gold Award for Outstanding Service 1968, the North Dakota Outstanding "Woman in Law" in 1973 from the North Dakota Women's Coalition and the North Dakota Commission on the Status of Women, the Milky Way Award in 1977 in recognition of outstanding contributions to the dairy industry of the state, the Distinguished Service Award 1977-1978 from the Western North Dakota

Health Systems Agency, the North Dakota Water Wheel Award in 1981 from the North Dakota Water Users Association and the North Dakota Water Management Districts Association, Sertoma's Service to Mankind Award in 1983, the Merit Award for Outstanding Service to Public Health in 1983 from the Public Health Association of North Dakota, the Liberty Bell Award in 1983 from the State Bar Association, the Distinguished Service Award in 1983 from the Mental Health Association of North Dakota, the Honorary Recognition Award in 1983 from the State Nurses Association of North Dakota, the Minot Association of Homebuilders Award for Outstanding Contributions to the Building Industry in 1984, and induction into the Scandinavian Hall of Fame in 1984; and

WHEREAS, her accomplishments need to be recognized in an appropriate manner so as to inform the citizens of the state of her dedication to public service; and

WHEREAS, public meeting rooms in the State Capitol have been named in recognition of personages having important roles in this state's history;

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

That the Fiftieth Legislative Assembly designates the Dakota Room as the Brynhild Haugland Room in recognition of Representative Haugland's service to the Legislative Assembly and to the people of the state over the years; and

BE IT FURTHER RESOLVED, that the appropriate public officers and employees take the action necessary to rename the Dakota Room the Brynhild Haugland Room, including informing other public agencies, replacing room designation plaques, and taking any other action necessary to ensure designation of and reference to the room as the Brynhild Haugland Room; and

BE IT FURTHER RESOLVED, that the Secretary of State present a copy of this resolution to Representative Haugland and forward a copy of this resolution to the Director of Institutions.

Filed March 19, 1987

CHAPTER 858

HOUSE CONCURRENT RESOLUTION NO. 3091
(Representatives Hamerlik, Cleveland, J. DeMers, Shaft, Strinden,
Kuchera, Graba, Gates, D. Olsen, Shide)
(Senators Stenehjelm, Ingstad, Holmberg, Shea, Mutch)
(Approved by the Committee on Delayed Bills)

FIGHTING SIOUX HOCKEY TEAM

A concurrent resolution congratulating the University of North Dakota Fighting Sioux Hockey Team on an outstanding season that culminated in winning the NCAA Division I National Hockey Championship.

WHEREAS, the University of North Dakota Fighting Sioux Hockey Team captured the NCAA Division I Hockey Championship with its victory in Detroit, Michigan, on March 28, 1987; and

WHEREAS, the 1986-87 University of North Dakota Fighting Sioux Hockey Team established numerous national, conference, and team records, including winning an unprecedented 40 games in one season; and

WHEREAS, members of the 1986-87 University of North Dakota Fighting Sioux Hockey Team were honored with awards in the naming of the national college hockey coach of the year, John "Gino" Gasparini; the Hobey Baker Award winner, Tony Hrkac; and four All-American hockey players in Tony Hrkac, Bob Joyce, Ian Kidd, and Ed Belfour; and

WHEREAS, on a team distinguished by individual awards and records this was, most of all, a team that displayed exemplary teamwork and selflessness in pursuit of a common goal that was realized by winning the 1986-87 NCAA Division I Hockey Championship;

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

That the Fiftieth Legislative Assembly takes great pride in extending to all members and coaches of the University of North Dakota Fighting Sioux Hockey Team its heartiest congratulations for winning the 1986-87 NCAA Division I National Hockey Championship; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to each member of the University of North Dakota Fighting Sioux Hockey Team, to each of their coaches, and to the president of the University of North Dakota, home of the Fighting Sioux.

Filed April 2, 1987

CHAPTER 859

HOUSE CONCURRENT RESOLUTION NO. 3092

(Representatives Hamerlik, Cleveland, J. DeMers, Shaft, Strinden,
Kuchera, Graba, Gates, D. Olsen, Shide)
(Senators Stenehjem, Ingstad, Holmberg, Shea, Mutch)
(Approved by the Committee on Delayed Bills)

TONY HRKAC CONGRATULATED

A concurrent resolution congratulating Tony Hrkac on winning the 1987 Hobey Baker Award as college hockey's finest player.

WHEREAS, Tony Hrkac has been unanimously named the winner of the 1987 Hobey Baker Award, given annually to collegiate hockey's finest player; and

WHEREAS, Tony Hrkac was singularly deserving of winning the Hobey Baker Award, having completed a season in which he helped the University of North Dakota to a national championship and established a new single season national collegiate hockey individual scoring record of 116 points and was named to the first team All-WCHA Hockey Team, named the WCHA most valuable player, named to the first team All-American Hockey Team, and named most valuable player of the National Hockey Tournament; and

WHEREAS, in addition to his outstanding individual accomplishments during the season, Tony Hrkac displayed outstanding teamwork and leadership throughout the season;

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

That the Fiftieth Legislative Assembly takes great pleasure in extending its sincere congratulations to Tony Hrkac for winning the 1987 Hobey Baker Award as college hockey's finest player; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to Tony Hrkac and to the president of the University of North Dakota, home of the Fighting Sioux.

Filed April 2, 1987

CHAPTER 860

HOUSE CONCURRENT RESOLUTION NO. 3093

(Representatives Hamerlik, Cleveland, J. DeMers, Shaft, Strinden,
Kuchera, Graba, Gates, D. Olsen, Shide)

(Senators Stenehjelm, Ingstad, Holmberg, Shea, Mutch)
(Approved by the Committee on Delayed Bills)

JOHN GASPARINI CONGRATULATED

A concurrent resolution congratulating John "Gino" Gasparini on coaching the University of North Dakota Fighting Sioux Hockey Team to the NCAA Division I National Championship and being named by his peers as Coach of the Year.

WHEREAS, John "Gino" Gasparini was named as Coach of the Year by his peers during the 1986-87 season and capped the season by leading his University of North Dakota Fighting Sioux Hockey Team to the NCAA Division I National Hockey Championship; and

WHEREAS, John "Gino" Gasparini in nine years as head coach of the University of North Dakota Fighting Sioux Hockey Team has coached his team to four WCHA hockey championships and three NCAA Division I championships and has established a hockey program of which all North Dakotans are justifiably proud; and

WHEREAS, John "Gino" Gasparini has established a University of North Dakota Fighting Sioux hockey program that has seen 28 players go on to star in the National Hockey League and several players go into competition with the Canadian or United States Olympic hockey teams and other levels of amateur and professional hockey and has established a program of outstanding competitive excellence;

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

That the Fiftieth Legislative Assembly takes great pride in extending to Coach John "Gino" Gasparini its most sincere congratulations for winning the 1987 NCAA Division I Hockey Championship and for establishing a hockey program of excellence of which all North Dakotans can be justifiably proud; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to Coach John "Gino" Gasparini and to the president of the University of North Dakota, home of the Fighting Sioux.

Filed April 2, 1987

CHAPTER 861

HOUSE CONCURRENT RESOLUTION NO. 3094
(Nowatzki, Mertens)
(Approved by the Committee on Delayed Bills)

CENTRAL NOTICE SYSTEM CHANGES URGED

A concurrent resolution urging the Congress of the United States to enact legislation deleting the requirement that nonconsensual statutory lien statements contain the signature and Social Security number of the person engaged in farming operations in order to be considered effective financing statements for purposes of filing the lien statements in a state's central notice system established under the Food Security Act of 1985.

WHEREAS, the administrator of the Packers and Stockyards Administration of the United States Department of Agriculture takes the position that effective financing statements filed in a state's central notice system must contain all the information required under the Food Security Act of 1985, including the signature and Social Security number of the person engaged in farming operations; and

WHEREAS, acceptance of nonconsensual statutory lien statements without the signature and Social Security number of the person engaged in farming operations by the Secretary of State may result in decertification of North Dakota's central notice system by the Packers and Stockyards Administration; and

WHEREAS, the signature and Social Security number of the person engaged in farming operations are often impossible or difficult to obtain by a person entitled to a nonconsensual statutory lien; and

WHEREAS, persons entitled to nonconsensual statutory liens should be afforded the same protection accorded other types of creditors who are able to protect themselves against third-party buyers by filing effective financing statements under a state's central notice system;

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

That the Fiftieth Legislative Assembly urges the Congress of the United States to enact legislation deleting the requirement that nonconsensual statutory lien statements contain the signature and Social Security number of the person engaged in farming operations in order to be considered an effective financing statement for purposes of filing the lien statement in a state's central notice system; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Agriculture of the United States Department of Agriculture, the administrator of the Packers and Stockyards Administration of the United States Department of Agriculture, the chairmen of the United States Senate and House Committees on Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 1987

CHAPTER 862

HOUSE CONCURRENT RESOLUTION NO. 3095
(Representatives Martin, Kretschmar, Stofferahn)
(Senators Stromme, Holmberg, Maxson)
(Approved by the Committee on Delayed Bills)

CONSTITUTIONAL REVISION COMMITTEE

A concurrent resolution directing the Legislative Council to establish a constitutional revision committee to study and make recommendations regarding revision of the Constitution of North Dakota.

WHEREAS, the Constitution of the State of North Dakota was adopted nearly 100 years ago in 1889; and

WHEREAS, although the product of the 1972 Constitutional Convention was not approved by the voters in that year, much of the 1972 constitution has since been adopted on a piecemeal basis; and

WHEREAS, since 1977 the Legislative Assembly has had a Joint Constitutional Revision Committee to which all resolutions proposing amendments or repeals to the Constitution of North Dakota are referred; and

WHEREAS, there is insufficient time during legislative sessions to adequately consider the complexities of constitutional revision issues;

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

That the Legislative Council establish an interim constitutional revision committee and that the committee study the Constitution of North Dakota, which study may include proposed revisions considered during the 1987 session or proposed by legislators or other citizens subsequent to the 1987 session; and

BE IT FURTHER RESOLVED, that the interim constitutional revision committee function in the same way as other interim Legislative Council committees; 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-first Legislative Assembly.

Filed April 14, 1987

CHAPTER 863

HOUSE CONCURRENT RESOLUTION NO. 3096
(Representatives G. Berg, Kingsbury, Nicholas)
(Senators Thane, Mutch)
(Approved by the Committee on Delayed Bills)

WETLANDS POLICY ECONOMIC IMPACT STUDY

A concurrent resolution directing the Legislative Council to study the economic impact that implementation of a "no net loss of wetlands" policy would have in this state; the effect that implementation of such a policy would have on rivers, lakes, and farmland in this state; the number of resident and migratory waterfowl that rely on wetlands in this state; and the effect that drained and undrained wetlands have on the water table of salt affected soils.

WHEREAS, under the concept of "no net loss of wetlands", any wetland acres drained would have to be replaced by an equal acreage of replacement wetlands; and

WHEREAS, any wetland replaced by a wetland purchased by a governmental entity would remove those replacement acres from the local tax base; and

WHEREAS, implementation of a "no net loss of wetlands" policy may affect flood control and water management in many areas of the state; and

WHEREAS, implementation of such a policy may increase the economic benefits of wetlands through increased hunting and outdoor recreation; and

WHEREAS, the number of migratory and resident waterfowl that rely on and benefit from wetlands in this state should be determined; and

WHEREAS, in some areas with high water tables where wetlands may have been drained, saline water has seeped to the surface of the land and upon evaporation the saline water leaves a salty residue that causes soil sterility in the area of the saline seep;

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

That the Legislative Council study the beneficial or adverse economic impact that implementation of a "no net loss of wetland" policy would have on this state, including the impact on landowners, farmers, local businesses, and the hunting industry in this state, and the effect implementation of such a policy would have on rivers, lakes, and farmland in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a determination to the extent practicable of the number of migratory and resident waterfowl relying on wetlands in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a study of the effect that drained and undrained wetlands have on the water table of salt affected soils, the effect on surrounding cropland, and the resulting impact on agricultural land; 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-first Legislative Assembly.

Filed April 16, 1987

CHAPTER 864

HOUSE CONCURRENT RESOLUTION NO. 3098
(Committee on Employment)
(Approved by the Committee on Delayed Bills)

LEGISLATIVE EMPLOYEE RETENTION

A concurrent resolution authorizing the retention of certain employees of the House and Senate to allow for the completion of legislative work after the close of the Session.

WHEREAS, it is necessary to complete and close all legislative work of the regular session of the Fiftieth Legislative Assembly; and

WHEREAS, to complete and close this work, certain legislative employees should be retained;

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

That the following named positions may be retained by the House of Representatives and the Senate after the close of the regular session:

HOUSE POSITIONS

Chief Clerk
Assistant Chief Clerk
Desk Reporter
Bill Clerk
Sergeant-at-Arms
Assistant Sergeant-at-Arms
Chief Page and Bill Book Clerk
Chief Steno and Payroll Clerk
Chief Bill and Journal Room Clerk
Bill Room Clerk
Appropriations Committee Clerk
Assistant Appropriations Committee Clerk
Secretary to Speaker
Secretary to Majority Leader
Secretary to Minority Leader

SENATE POSITIONS

Secretary of the Senate

Assistant Secretary of the Senate
Desk Reporter
Bill Clerk
Desk Page
Sergeant-at-Arms
Assistant Sergeant-at-Arms
Assistant Sergeant-at-Arms
Chief Page
Chief Stenographer and Payroll Clerk
Stenographer
Chief Committee Clerk
Appropriations Committee Clerk
Secretary to Majority Leader
Assistant Secretary to Majority Leader
Secretary to Minority Leader
Chief Telephone Operator

BE IT FURTHER RESOLVED, that the above-listed House and Senate employees shall serve at the request of, and under the supervision of, the Chief Clerk of the House and the Secretary of the Senate, and that all of the listed employees, including the Chief Clerk of the House and the Secretary of the Senate, shall be employed for not more than 200 man-days in the aggregate. The Chief Clerk of the House and the Secretary of the Senate shall assign work among the available House and Senate employees, respectively, in the appropriate manner. The Chief Clerk of the House and the Secretary of the Senate shall coordinate the work assignments in their respective houses in such a manner that the total number of man-days utilized does not exceed the aggregate limits on man-days set out herein. The Chief Clerk of the House and the Secretary of the Senate shall minimize the days spent in completion of legislative business to the extent consistent with that completion; and

BE IT FURTHER RESOLVED, that the employees in the above-named positions be paid their regular rates of pay as specified in House Concurrent Resolution No. 3019 for all work required pursuant to this resolution, and all of these sums are to be paid out of the appropriation to the Fiftieth and Fifty-first Legislative Assemblies, and paid at the completion of the legislative work; providing that payment may not be for more than 200 man-days in the aggregate, and each above-listed employee must be paid on a pro rata basis, should the total number of man-days exceed the allowed limit.

Filed April 16, 1987

CHAPTER 865

HOUSE CONCURRENT RESOLUTION NO. 3099
(Koland)
(Approved by the Committee on Delayed Bills)

PROPERTY MANAGER STUDY

A concurrent resolution directing the Legislative Council to study real estate licensure requirements for property managers.

WHEREAS, 1987 House Bill No. 1450 relates to excepting from real estate licensure requirements persons who accept or market leasehold interests in property and who perform acts with reference to that property which are normally performed by licensed real estate brokers or salesmen; and

WHEREAS, 1987 House Bill No. 1403 relates to subjecting to real estate licensure requirements, with limited exceptions, property managers; and

WHEREAS, in a letter dated September 23, 1986, the Attorney General concluded that certain managers of property are not subject to real estate licensure provisions while others are; and

WHEREAS, there is uncertainty regarding whether property managers are or should be subject to real estate licensure requirements and what licensure exceptions if any should be provided;

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

That the Legislative Council study real estate licensure provisions to determine the feasibility and desirability of subjecting property managers to or excepting them from real estate licensure provisions; 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-first Legislative Assembly.

Filed April 21, 1987

CHAPTER 866

HOUSE CONCURRENT RESOLUTION NO. 3901
(Representative Martinson)
(Senator Satrom)
(Approved by the Committee on Delayed Bills)

**LEGISLATIVE EXTRAORDINARY SESSION
EMPLOYEES DESIGNATION AND COMPENSATION**

A concurrent resolution providing and designating House and Senate employees during the extraordinary session of the Fiftieth Legislative Assembly and fixing their compensation.

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

That for and during the extraordinary session of the Fiftieth Legislative Assembly which convened on Tuesday, December 2, 1986, the following named persons are employed and appointed as employees of the House and Senate and are to be paid the daily wages opposite their respective names in accordance with their positions as shown below:

HOUSE

Roy Gilbreath, Chief Clerk	\$85.00
Barbara Middaugh, Desk Reporter	79.00
David Hillesland, Sergeant-at-Arms	64.00
Skip Sjothun, Assistant Chief Clerk	70.00
Jeane Marschke, Bill Clerk	64.00
Theola Stetson, Chief Stenographer & Payroll Clerk	64.00
Cindy Nelson, Committee Clerk	58.00
Connie Johnson, Committee Clerk	58.00
Carol Nitschke, Committee Clerk	58.00
Tove Mandigo, Chief Page & Bill Book Clerk	55.00
Skip Elefson, Desk Page	48.00
Mazie Patchen, Secretary to Majority Leader	70.00
Jan Franklund, Secretary to Minority Leader	70.00
Ron Carlisle, Deputy Sergeant-at-Arms	52.00
Phyllis Connolly, Bill Room Clerk	48.00
Linda Mueller, Telephone Attendant	48.00
Kimberly Pollert, Stenographer	52.00
Robert Guler, Page & Bill Book Clerk	48.00

SENATE

Perry Grotberg, Secretary of the Senate	\$85.00
Chris King, Desk Reporter	79.00
Paula Riehl, Desk Reporter Trainee	70.00
Doug Nordby, Sergeant-at-Arms	64.00
Frank LaQua, Assistant Secretary of the Senate & Bill Clerk	70.00
Maureen Mulhauser, Chief Stenographer & Payroll Clerk	64.00
Jackie Giovannoni, Chief Page & Bill Book Clerk	55.00
Stephanie Gullickson, Desk Page	48.00
Sandi Kershaw, Secretary to Majority Leader	70.00
Wanda Scheid, Assistant Secretary to Majority Leader	64.00
Jan Steinle, Secretary to Minority Leader	70.00
Vern Thompson, Deputy Sergeant-at-Arms	52.00
Olger Sandven, Assistant Sergeant-at-Arms	48.00
Renee Bullinger, Chief Telephone Attendant	52.00
Sharon Neukircher, Stenographer	52.00
Diane Larson, Page	48.00
Janice Clancy, Information Desk Attendant	48.00

BE IT FURTHER RESOLVED, that the Employment Committees of the House and Senate are authorized to hire additional employees as may be warranted for the positions, and at the rates, set forth in 1985 Senate Concurrent Resolution No. 4029, as passed; and

BE IT FURTHER RESOLVED, that legislative employees are entitled to recover necessary travel and lodging expenses, at the same rate as for other state employees during the extraordinary session, and for authorized days before and afterwards; and

BE IT FURTHER RESOLVED, that payment is authorized at the rates set forth in 1985 Senate Concurrent Resolution No. 4029, as passed, for services provided by other legislative employees and for janitorial services provided by the staff of the Director of Institutions; and

BE IT FURTHER RESOLVED, that in the event any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided for in this resolution ceases effective the last day of employment.

Filed December 8, 1986

HOUSE MEMORIAL RESOLUTION

CHAPTER 867

HOUSE MEMORIAL RESOLUTION NO. A
(Committee on Memorial Resolutions)

DECEASED HOUSE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the House of Representatives of the State of North Dakota.

WHEREAS, God in His Wisdom has seen fit to summon to eternal rest His servants and our former colleagues:

Harry Bergman, who served in the 38th and 39th Legislative Assemblies, from the 10th District, died December 5, 1986.

Lawrence Bowman, who served in the 37th through the 39th Legislative Assemblies, from the 39th District, died March 12, 1985.

Howard O. Bye, who served in the 33rd through the 37th Legislative Assemblies, from the 5th District, died October 11, 1986.

Wilfred A. Collette, who served in the 27th through the 33rd, and in the 35th through the 39th Legislative Assemblies, from the 4th District, died September 7, 1986.

Russell Duncan, who served in the 39th and 40th Legislative Assemblies, from the 21st District, died February 24, 1986.

Robert T. Gray, who served in the 26th and 33rd Legislative Assemblies, from the 30th District, died November 30, 1986.

Edward Haag, who served in the 26th through the 29th Legislative Assemblies, from the 36th District, died June 27, 1986.

Leslie Gullickson, who served in the 48th and 49th Legislative Assemblies, from the 53rd District, died October 3, 1985.

Eugene C. Laske, who served in the 43rd and 44th Legislative Assemblies, from the 26th District, died August 29, 1986.

Fern E. Lee, who served in the 40th, and the 42nd through the 46th Legislative Assemblies, from the 7th District, died July 5, 1986.

Oscar Lee, who served in the 31st and 32nd Legislative Assemblies, from the 45th District, died September 26, 1985.

Peter Lipsiea, who served in the 45th through the 49th Legislative Assemblies, from the 20th District, died June 21, 1985.

Ruth Meiers, who served in the 44th through the 48th Legislative Assemblies, from the 4th District, died March 19, 1987.

Reuben L. Metz, who served in the 44th and 45th, and the 47th Legislative Assemblies, from the 28th District, died February 17, 1987.

William Nelson, who served in the 27th and 28th Legislative Assemblies, from the 30th District, died February 15, 1986.

Manfred R. Ohnstad, who served in the 27th through the 30th Legislative Assemblies, from the 10th District, died February 25, 1987.

Harold Ostrem, who served in the 35th through the 37th Legislative Assemblies, from the 42nd District, died June 18, 1986.

Carl H. Pewe, who served in the 25th Legislative Assembly, from the 32nd District, died July 12, 1985.

George H. Saumur, who served in the 24th through the 34th Legislative Assemblies, from the 6th District, died December 21, 1986.

Robert L. Schoenwald, who served in the 39th Legislative Assembly, from the 29th District, died July 22, 1985.

Owen Solberg, who served in the 35th Legislative Assembly, from the 19th District, died December 4, 1986.

Benhard J. Wolf, who served in the 27th through the 37th Legislative Assemblies, from the 36th District, died December 4, 1986.

Milton R. Young, who served in the 23rd Legislative Assembly, from the 24th District, died May 31, 1983.

WHEREAS, today, we, as members of the House of Representatives of the 50th Legislative Assembly of the State of North Dakota, pause to mourn the passing of our former colleagues, and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contribution to their fellowmen and their communities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA:

That we express our keen sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of these our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that duly enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased representatives.

Filed March 31, 1987

SENATE RESOLUTION

CHAPTER 868

SENATE RESOLUTION NO. 1

(Freborg)

(Approved by the Committee on Delayed Bills)

RECOGNITION OF SENATE SECRETARY, DESK REPORTER, AND SERGEANT-AT-ARMS

A resolution recognizing Leo Leidholm, Doris McMahon, and Olger Sandven for their services as Secretary of the Senate, Desk Reporter, and Sergeant-at-Arms of the North Dakota Senate.

WHEREAS, Leo Leidholm served as Secretary of the Senate during 10 sessions, beginning with the 1967 Legislative Assembly; and

WHEREAS, Leo Leidholm also served the House of Representatives as Committee Clerk during the 1955 and 1957 Legislative Sessions and as Bill Clerk during the 1959, 1961, and 1963 Legislative Sessions; and

WHEREAS, Doris McMahon served as Desk Reporter of the Senate during six sessions, commencing with the 1975 Legislative Assembly; and

WHEREAS, Olger Sandven served as Deputy Sergeant-at-Arms of the Senate during the 1975 Legislative Session, Assistant Sergeant-at-Arms during the 1977 Legislative Session, and as Sergeant-at-Arms during four sessions, commencing with the 1979 Legislative Assembly; and

WHEREAS, Olger Sandven also served the House of Representatives as Assistant Sergeant-at-Arms during the 1969 and 1971 Legislative Sessions and as Deputy Sergeant-at-Arms during the 1973 Legislative Session; and

WHEREAS, the members of the Senate of the Fiftieth Legislative Assembly wish to express their appreciation to Leo Leidholm, Doris McMahon, and Olger Sandven for their years of service to the Senate and the people of the State of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA:

That the members of the Senate of the Fiftieth Legislative Assembly recognize Leo Leidholm, Doris McMahon, and Olger Sandven

for their years of dedicated service to the Legislative Assembly;
and

BE IT FURTHER RESOLVED, that the Secretary of the Senate send an enrolled copy of this resolution to Leo Leidholm, Doris McMahon, and Olger Sandven.

Filed December 8, 1986

SENATE CONCURRENT RESOLUTIONS

CHAPTER 869

SENATE CONCURRENT RESOLUTION NO. 4003
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICE DELIVERY SYSTEM

A concurrent resolution urging the Department of Human Services to implement changes to the human service delivery system in North Dakota.

WHEREAS, the Legislative Council's Budget Committee on Human Services during the 1985-87 interim conducted a study of the services provided by the Department of Human Services; the relationship between the Department of Human Services, the county social service boards, and mental health services; the services provided by the regional human service centers and the responsiveness of the centers to the court system and other referral agencies; and

WHEREAS, the committee engaged a consultant to survey employees of the Department of Human Services, regional human service centers, and county social service boards; to survey clients and referral sources; and to analyze the survey results and make recommendations regarding the human service delivery system; and

WHEREAS, the committee conducted tours and received testimony in each city containing a regional human service center regarding the effectiveness of the current human service delivery system;

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

That the Fiftieth Legislative Assembly urges the Department of Human Services to:

1. Improve coordination within the organization and with community service providers.
2. Enhance coordination by developing departmentwide glossaries, joint training, procedural and orientation manuals, and other devices to promote a sense of common mission and purpose.

3. Conduct an in-depth study of existing communication channels, identify restraints to accurate, effective, and speedy communication, and make changes necessary to reduce those restraints.
4. Enter into annual memorandums of understanding between the regional human service centers and county social service boards regarding respective responsibilities in the delivery of human services.
5. Develop informal memorandums of understanding or agreements between regional human service centers and community services relating to the mechanics of the referral process, human service planning, and the exchange of information.
6. Develop regional public information brochures to assist referral sources in understanding the purposes of the county and regional human service centers, the types and referrals that are appropriate for each, and mechanics of the referral process.
7. Define clearly the roles and responsibilities of each of the administrative positions within both the regional and state offices and minimize unnecessary duplication and areas of nonaccountability.
8. Identify the strengths and weaknesses of present administrators and provide the necessary training to assist them in overcoming identified weaknesses.
9. Develop a systemwide statement of purpose, goals, and objectives.
10. Seek, to the extent possible and reasonable, input from human service providers prior to instituting new policies and procedures.
11. Develop comprehensive planning on a systemwide rather than a programmatic or grant funded basis and establish priorities for the delivery of services by region and county.
12. Adopt a formal needs assessment process to be conducted on a systemwide basis.
13. Review existing programs and services periodically for possible discontinuation or modification.
14. Conduct a study of staff caseloads in each of the regions to determine appropriate standards and inequities.
15. Have each regional office develop a plan for promoting outreach.

16. Place greater emphasis on providing public information about the programs provided by the department.
17. Conduct a thorough review of the vocational rehabilitation division and its staff to determine the reasons for a high level of dissatisfaction within the division.
18. Place a greater emphasis on evaluated research and develop an information system to assist staff in planning, needs assessment, and program evaluation.
19. Evaluate staff members regularly, including administration, to determine their level of functioning and strengths and weaknesses.
20. Design a career development plan for each staff member and provide staff development opportunities to staff members in keeping with the individualized plan.
21. Conduct a study to determine if the staff salaries are equitable and competitive with salaries provided by similar organizations; and

BE IT FURTHER RESOLVED, that the Department of Human Services report to the Legislative Council, or any committee the Legislative Council designates, during the 1987-89 interim on the department's progress in implementing the recommendations.

Filed March 13, 1987

CHAPTER 870

SENATE CONCURRENT RESOLUTION NO. 4004 (Wright)

WATER IMPOUNDMENT RECOMMENDATIONS

A concurrent resolution urging the Congress of the United States to implement the recommendations of the Garrison Unit Joint Tribal Advisory Committee concerning the effects of the impoundment of waters under the Pick-Sloan Missouri Basin Program on the Fort Berthold and Standing Rock Indian Reservations and urging the creation of a similar advisory committee to review the impact of the impoundment of waters on the economic base of nontribal interests.

WHEREAS, the Garrison Diversion Unit Commission was established by an Act of Congress, Public Law 98-360, to review the contemporary water development needs of the State of North Dakota; and

WHEREAS, the Garrison Diversion Unit Commission, in its final report to the Secretary of the Interior and committees of the Congress of the United States, agreed with the Congress that a moral commitment was made in 1944 to the Upper Missouri Basin States and Indian Tribes with the passage of the Pick-Sloan Missouri Basin Program, and found that the State of North Dakota sacrificed hundreds of thousands of acres of land, much of it prime river bottom land, for the greater benefit of the Nation; and

WHEREAS, the Garrison Diversion Unit Commission further found that the Federal Government promised but has not provided assistance to replace the economic base of the State and Indian Tribes; and

WHEREAS, at the recommendation of the Garrison Diversion Unit Commission, the Secretary of the Interior on May 10, 1985, established the Garrison Unit Joint Tribal Advisory Committee to examine the impact of the impoundment of waters under the Pick-Sloan Missouri Basin Program on the Fort Berthold and Standing Rock Indian Reservations; and

WHEREAS, the Garrison Unit Joint Tribal Advisory Committee held several hearings during which it was made aware of the accuracy of the observation of the Garrison Diversion Unit Commission that the tribes of the Fort Berthold and Standing Rock Indian

Reservations bore an inordinate share of the cost of implementing the Pick-Sloan Missouri Basin Program mainstream reservoirs; and

WHEREAS, the Garrison Unit Joint Tribal Advisory Committee made findings and recommendations to find ways to resolve inequities borne by the tribes and to provide full potential for irrigation and financial assistance for on-farm development costs, development of shoreline recreation potential, return of excess lands, protection of reserved water rights, replacement of infrastructures lost by the creation of the Garrison and Oahe Reservoirs, preferential rights to Pick-Sloan Missouri Basin power, additional financial compensation, and other items; and

WHEREAS, the inundation of rich Missouri River bottom land by the Garrison and Oahe Reservoirs and project delays have resulted in agricultural, mineral, and forestry losses not only to tribal interests but nontribal interests as well;

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

That the Congress of the United States is urged to enact legislation implementing the recommendations of the Garrison Unit Joint Tribal Advisory Committee, and authorizing the creation of a similar advisory committee to review the impact of the impoundment of waters under the Pick-Sloan Missouri Basin Program on the economic base of nontribal persons and entities; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the presiding officers of the United States House of Representatives and United States Senate, to each member of the North Dakota Congressional Delegation, and to the Secretary of the Interior.

Filed March 19, 1987

CHAPTER 871

SENATE CONCURRENT RESOLUTION NO. 4006
(Senators Waldera, Ingstad)
(Representatives Wentz, Kelly)

U.S. CONSTITUTION BICENTENNIAL

A concurrent resolution urging the Governor of the State of North Dakota to designate September 17, 1987, as a commemorative day to commemorate the bicentennial of the Constitution of the United States.

WHEREAS, the bicentennial of the formal signing of the Constitution of the United States of America by delegates to the Philadelphia Convention occurs on September 17, 1987; and

WHEREAS, having won their liberty and independence by force of arms, and having experienced distress and danger because of an imperfect union, the people finally succeeded in forming the "more perfect Union" which is ordained and established by the Constitution; and

WHEREAS, the Constitution enunciates the limitations upon government, the inalienable rights, and the principles of individual liberty and equality before law, and sets an enduring example of representative democracy for other nations and their citizens; and

WHEREAS, the Constitutional Celebration Committee of the North Dakota Supreme Court has been formed to coordinate efforts to celebrate the bicentennial of the Constitution of the United States in North Dakota; and

WHEREAS, the Fiftieth Legislative Assembly regards the approaching bicentennial as an historic opportunity for all citizens of the state to learn about and recall the great achievements of our Founders and the knowledge and experience that inspired them, the nature of the government they established, its origins, its character, and its ends, and the rights and privileges of citizenship, as well as its attendant responsibilities;

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

That the Governor of the State of North Dakota is urged to designate Thursday, September 17, 1987, a commemorative day to be known as "Constitution Day"; and

BE IT FURTHER RESOLVED, that the Governor of the State of North Dakota is urged to encourage fitting state activities, both solemn and festive, to commemorate the bicentennial of the Constitution and to encourage private organizations and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification, and history of the Constitution and the specific features of the document; and

BE IT FURTHER RESOLVED, that the Governor of the State of North Dakota is urged to request all responsible citizens of the state to participate in the activities of September 17, 1987, and, to this end, the Governor is urged to cause this resolution to be published and circulated in such manner as the Governor shall determine; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to the Governor of the State of North Dakota.

Filed March 13, 1987

CHAPTER 872

SENATE CONCURRENT RESOLUTION NO. 4007
(Senators Heigaard, Olson)
(Representatives Strinden, Mertens)

LEGISLATIVE FITNESS DAY

A concurrent resolution recognizing the need for public awareness of the importance of physical fitness, designating the ninth day of March, 1987, as "Legislative Fitness Day", and urging all appropriate state agencies to promote public awareness of the importance of physical fitness.

WHEREAS, the health and future welfare of the citizens of this state are inextricably entwined; and

WHEREAS, March 4, 1985, was designated as the first Legislative Fitness Day in recognition of the importance of physical fitness; and

WHEREAS, to heighten our awareness of the importance of physical fitness the North Dakota Alliance of Health, Physical Education, Recreation and Dance has again volunteered to perform a variety of health care screening and assessment services for members of the Legislative Assembly and legislative employees; and

WHEREAS, a day of physical fitness recognized as such by the Legislative Assembly will serve to promote the public's awareness of the importance of good health care practices;

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

That the ninth day of March, 1987, be designated as "Legislative Fitness Day"; and

BE IT FURTHER RESOLVED, that all appropriate state agencies are encouraged to promote public awareness of the importance of physical fitness and good health care practices.

Filed March 13, 1987

CHAPTER 873

SENATE CONCURRENT RESOLUTION NO. 4008

(Senator Hilken)

(Representative Anderson)

FEDERAL HIGHWAY AID

A concurrent resolution urging Congress to reauthorize promptly the federal highway aid program.

WHEREAS, the Ninety-ninth Congress adjourned without reauthorizing the federal aid highway program and as a result that program ran out of new money on September 30, 1986; and

WHEREAS, by the end of 1986 this state had exhausted its remaining \$2.9 million in funds under that program; and

WHEREAS, this state has a short construction season, running generally from May through September; and

WHEREAS, delaying reauthorization of the federal aid highway program would jeopardize \$31.5 million worth of major highway projects during this state's 1987 construction season; and

WHEREAS, delaying these projects would cause the loss of many jobs in the construction industry throughout this state, would unnecessarily delay the benefits arising from that construction, and would result in increased traffic congestion and inconvenience to motorists; and

WHEREAS, among the projects threatened by the loss of federal funds during the 1987 construction year are major rehabilitations of North Dakota's two interstate highways, I-29 and I-94; rehabilitation of the main street of North Dakota's capital, Bismarck; rehabilitation of the main street in North Dakota's leading railroad terminal and oil refinery city, Mandan; regrading of part of North Dakota's Lewis and Clark Trail, State Highway 25; completion of paving of the "missing link" in the four-laning of U.S. Route 2, allowing four-lane travel between Grand Forks and Minot; and various and sundry other important highway projects; and

WHEREAS, the process involved in issuing highway contracts requires that reauthorization be passed by March 1 if the North Dakota highway construction season is to begin on time; and

WHEREAS, even if funding is eventually received, postponing projects until a later construction season would still result in irretrievable loss of jobs during 1987; and

WHEREAS, the economy of North Dakota is suffering from the effects of depressed prices in both the agricultural and energy sectors, and the further losses in the construction industry which will result if Congress does not promptly reauthorize the highway aid program will cause irreparable damage to the well-being of the people of this state;

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

That the Fiftieth Legislative Assembly finds that an emergency situation exists and urges the Congress of the United States to reauthorize promptly the federal highway aid program; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the Secretary of the United States Department of Transportation, the chairman of the House Transportation Committee, the chairman of the Senate Environment and Public Works Committee, and to the other two members of the North Dakota Congressional Delegation.

Filed January 16, 1987

CHAPTER 874

SENATE CONCURRENT RESOLUTION NO. 4010
(Senators Waldera, Mushik)
(Representatives Wentz, J. DeMers)

ADULT PROTECTIVE SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the need for providing protective services to vulnerable adults subject to abuse, neglect, self-neglect, and exploitation.

WHEREAS, the problem of vulnerable adults, including developmentally disabled, chronically mentally ill, and drug or alcohol-abusing adults, who are subject to abuse, neglect, self-neglect, and exploitation is a growing concern in many communities in the state; and

WHEREAS, many vulnerable adults are unable or unlikely to seek protective services or assistance to deal with abuse, neglect, self-neglect, or exploitation; and

WHEREAS, many vulnerable adults do not receive protective services because state law does not clearly define the roles and responsibilities of state and local agencies and other organizations with respect to the receipt and investigation of reports of adult abuse, neglect, self-neglect, or exploitation; and

WHEREAS, present resources provide an inadequate response to the problem of abuse, neglect, self-neglect, and exploitation of vulnerable adults;

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

That the Legislative Council is directed to study alternative means of providing protective services for vulnerable adults who are subject to abuse, neglect, self-neglect, or exploitation; and

BE IT FURTHER RESOLVED, that the Legislative Council receive information and research data obtained by the department of human services through the adult protective service demonstration project; 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-first Legislative Assembly.

CHAPTER 875

SENATE CONCURRENT RESOLUTION NO. 4015 (Senator Adams) (Representative Smette)

STAMP SERIES

A concurrent resolution urging adoption of an "America Thru Our States" stamp series.

WHEREAS, a stamp series depicting the unique qualities of the individual states of this country would benefit tourism and generate citizen pride in the various states; and

WHEREAS, the "America Thru Our States" stamp series would be comprised of individual stamps selected in each state after a contest for artistic entries supervised by the tourism department and Postal Service in each state; and

WHEREAS, the selected state artist's entry would be sold in booklet form and, if possible, printed in its home state; and

WHEREAS, the recent experience with North Dakota's Rose stamp illustrates the warm reception to be extended to a stamp unique to this state; and

WHEREAS, the availability of these stamps would generate a sense of participation and goodwill among customers and postal workers as customers purchased and collected the stamps or used them on their mailings; and

WHEREAS, an "America Thru Our States" stamp series would generate interest in North Dakota's singular attractions and would promote pride and respect for this state as well as all other states in this nation;

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

That the Fiftieth Legislative Assembly expresses its wholehearted support for, and urges the adoption of, the "America Thru Our States" stamp series; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Stamp Design Selection Committee, U.S. Postal Service Headquarters, Washington, D.C., and to each member of the North Dakota Congressional Delegation.

Filed March 13, 1987

CHAPTER 876

SENATE CONCURRENT RESOLUTION NO. 4016 (Senators J. Meyer, Mushik) (Representatives Wentz, Rydell)

COMPARABLE WORTH STUDY

A concurrent resolution directing the Legislative Council to study the use of comparable worth to determine the existence of wage-based sex discrimination.

WHEREAS, the federal Equal Pay Act of 1963 requires equal pay for equal work; and

WHEREAS, comparable worth, or equal pay for work of equal value, was first advanced nearly seven years ago; and

WHEREAS, comparable worth may be a more equitable method of determining wage-based sex discrimination than equal pay for equal work, because persons employed in dissimilar jobs are evaluated by objective criteria to determine relative value to the employer; and

WHEREAS, wage-based sex discrimination is prohibited in North Dakota by North Dakota Century Code Section 34-06.1-03 to the extent that employers discriminate at the same establishment between employees who work at jobs with comparable requirements relating to skill, effort, and responsibility;

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

That the Legislative Council study comparable worth or equal pay for work of equal value to determine the feasibility and desirability of state legislation requiring governmental entities to pay their employees based upon work of equal value; and

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

Filed April 21, 1987

CHAPTER 877

SENATE CONCURRENT RESOLUTION NO. 4017
(Heinrich, Nalewaja, Stenehjem)

CHILD ABUSE LAWS STUDY

A concurrent resolution directing the Legislative Council to study the investigation and prosecution procedures for child abuse and neglect cases and to determine whether state law protects the interests of justice and of all parties involved in such cases.

WHEREAS, child abuse and neglect is a growing problem, with 3,023 cases reported in North Dakota during the year ending July 1, 1986; and

WHEREAS, it is imperative that action be taken to protect children who are being abused or neglected; and

WHEREAS, the continuing problem of child abuse and neglect is exacerbated by inconsistent application and enforcement of laws that are often inadequate or ill-suited to meet the challenge posed by this distressing problem; and

WHEREAS, the continuing presence of child abuse and neglect underscores the need to reassess the adequacy of existing penalties and to consider the adequacy of sentencing for certain child abuse offenses; and

WHEREAS, it is also a great concern that parents, relatives, child care providers, and public workers not be falsely accused of offenses regarding the abuse or neglect of children; and

WHEREAS, persons charged with a crime have the right to face and question their accusers; and

WHEREAS, children may be harmed by excessive questioning and cross-examination in court; and

WHEREAS, the National Center of Missing and Exploited Children has issued a guide for state legislators urging revision of state child abuse laws, suggesting new reporting statutes for child abuse cases, extending statutes of limitation in child abuse cases,

providing for out of court testimony by children, and eliminating corroboration rules for testimony; and

WHEREAS, it is imperative that the Department of Human Services, county social service boards, juvenile courts, law enforcement agencies, and state's attorneys' offices cooperate and coordinate in their efforts to provide child protective services;

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

That the Legislative Council study the reporting, investigation, prosecution, and treatment procedures of child abuse and neglect cases and to determine whether state law protects the interests of justice and of all parties involved in such cases; and

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

Filed March 25, 1987

CHAPTER 878

SENATE CONCURRENT RESOLUTION NO. 4018 (Senators Holmberg, Stenehjem, Heinrich) (Representatives Belter, Shaft, Cleveland)

GUARANTEED TUITION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing a guaranteed tuition program for financing a child's postsecondary education.

WHEREAS, families are finding it increasingly difficult to plan for college education due to the unpredictability of escalating costs; and

WHEREAS, it is the responsibility of the state to maintain state institutions of higher education as provided by Article VIII, Section 2, of the Constitution of North Dakota; and

WHEREAS, it is in the best interest of the people of this state to foster public higher education in order to provide well-educated citizens; and

WHEREAS, parents should be encouraged to contribute to the education of their children to the extent that is reasonably possible; and

WHEREAS, even dedicated and sacrificial parental investment plans are often inadequate to meet the costs of education for their children; and

WHEREAS, a coordinated, combined investment program is often more reliable and profitable than individual efforts; and

WHEREAS, creative financing techniques for higher education should be encouraged; and

WHEREAS, a program to provide for advanced tuition payment contracts would assist families in the financing of their children's college education and would encourage parents to make investments toward their children's future postsecondary education;

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

That the Legislative Council study the guaranteed tuition payment plans of other states and other innovative alternatives to financing the cost of higher education to determine the desirability of establishing an alternative method of financing education in this state; 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-first Legislative Assembly.

Filed March 13, 1987

CHAPTER 879

SENATE CONCURRENT RESOLUTION NO. 4020 (Committee on Appropriations)

BLOCK GRANT HEARINGS

A concurrent resolution regarding the approval of state agency use of block grant funds, and authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants as passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 on July 29, 1981, thus creating several categories of "block" grant programs; and

WHEREAS, legislatures of the states are required to conduct public hearings; and

WHEREAS, the Appropriations Committees have held the required public hearings on block grant moneys expected for the next biennium by the Office of Management and Budget, Department of Human Services, and State Department of Health; and

WHEREAS, the Fiftieth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by the Congress after the recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 1988 and thus its public hearing responsibility for grants not approved by the Fiftieth Legislative Assembly must be delegated to a legislative entity;

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

That the appropriation bills for the Office of Management and Budget, Department of Human Services, and State Department of Health, as they are passed by this Legislative Assembly are the Legislative Assembly's approval and contain directions on the use of block grant moneys for the period ending September 30, 1989; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of block grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the Budget Section authority granted by this resolution is in effect during the period from the recess or adjournment of the Fiftieth Legislative Assembly through September 30, 1989, and the Budget Section shall utilize such methods and procedures for holding such hearings and giving notice thereof as it deems appropriate.

Filed March 13, 1987

CHAPTER 880

SENATE CONCURRENT RESOLUTION NO. 4021
(Senators Wogsland, Tennesos, Wright)
(Representatives Rydell, O'Connell, J. DeMers)

EMERGENCY MEDICAL SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the problems faced by and the funding of the North Dakota emergency medical services system and, in particular, volunteer ambulance services and the Division of Emergency Health Services of the State Department of Health.

WHEREAS, the provision of emergency medical services to the citizens of this state is essential to maintaining and enhancing the health and welfare of every citizen; and

WHEREAS, included in the state emergency medical services system are prehospital care providers such as local ambulance services, quick response units, rescue squads, and first responders, as well as the regulatory, training, and education support services provided by the Division of Emergency Health Services of the State Department of Health; and

WHEREAS, there are 134 ambulance services in North Dakota available 24 hours per day, with 117 of those services staffed by full-time trained volunteers, all of whom serve without pay and contribute the equivalent of over \$13 million annually in volunteer service to the health and welfare of the public; and

WHEREAS, the cost to adequately and uniformly maintain these volunteer ambulance services with up-to-date equipment and current professional and technical training has exceeded the ability of many ambulance users and ambulance service districts to fund those services; and

WHEREAS, federal highway safety funds available to local ambulance service districts through the Division of Emergency Health Services of the State Department of Health to help fund a large portion of the state emergency medical services system have been drastically reduced; and

WHEREAS, the Governor's Emergency Medical Services Advisory Council has established broad goals recommending enhanced support of the state emergency medical services system;

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

That the Legislative Council study the problems faced by the state emergency medical services system, including volunteer ambulance districts in North Dakota and the Division of Emergency Health Services, as well as alternative courses of action and funding sources for ambulance service districts and the state emergency medical services system, to help maintain and enhance continued viability of that system; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 881

SENATE CONCURRENT RESOLUTION NO. 4022 (Olson)

CRIMINAL SENTENCING STUDY

A concurrent resolution directing the Legislative Council to study criminal sentencing statutes in misdemeanor and felony cases.

WHEREAS, there is a lack of consistency in the statutory provisions relating to misdemeanor and felony sentencing in chapters 12-53 and 12.1-32 of the North Dakota Century Code; and

WHEREAS, the case law development of the area of sentencing in North Dakota would be enhanced by a clarification of the statutory provisions relating to sentencing;

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

That the Legislative Council is directed to study the criminal sentencing statutes for misdemeanor and felony cases and to make recommendations to improve those statutes; 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-first Legislative Assembly.

Filed March 10, 1987

CHAPTER 882

SENATE CONCURRENT RESOLUTION NO. 4023
(Senator Holmberg)
(Representative Shaft)

SENIOR CITIZENS' PROPERTY TAX CREDITS STUDY

A concurrent resolution directing the Legislative Council to study property tax credits allowed by law for persons 65 years of age or older with limited income.

WHEREAS, the state of North Dakota has recognized, through enactment of what is now codified as North Dakota Century Code Section 57-02-08.1, that senior citizens living on limited income are worthy of property tax credits when living in housing they own or rent; and

WHEREAS, the Legislative Assembly has on several occasions adjusted the allowable property tax credits for persons 65 years of age or older with limited income; and

WHEREAS, changing economic circumstances of senior citizens and the importance of property tax relief for senior citizens require that detailed study be made of the property tax credits allowed for senior citizens to assure that the property tax credits are serving the intended purposes of providing meaningful financial assistance to senior citizens with limited income;

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

That the Legislative Council study the property tax credits allowed for persons 65 years of age or older with limited income to assure that the credits will provide intended assistance to qualifying persons; 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-first Legislative Assembly.

Filed March 10, 1987

CHAPTER 883

SENATE CONCURRENT RESOLUTION NO. 4026
(Senator Maixner)
(Representative Rydell)

VICTIM AND WITNESS ASSISTANCE STUDY

A concurrent resolution directing the Legislative Council to study programs for assistance to victims of and witnesses to crime.

WHEREAS, victims and witnesses to crime should be handled with sensitivity by the criminal justice system; and

WHEREAS, revictimization may leave those victims and witnesses discouraged and abused and, therefore, unwilling participants; and

WHEREAS, programs that provide assistance to victims and witnesses of crime assist the criminal justice system in prosecuting criminals;

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

That the Legislative Council study the state's role in the handling, assisting, or funding of victims of and witnesses to crimes; 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-first Legislative Assembly.

Filed April 10, 1987

CHAPTER 884

SENATE CONCURRENT RESOLUTION NO. 4030 (Lips)

YMCA MODEL LEGISLATURE

A concurrent resolution expressing the support of the Fiftieth Legislative Assembly and urging cooperation for the Young Men's Christian Association model legislature program.

WHEREAS, the first YMCA State Youth and Government Program was initiated in New York in 1936, and since that time over 40 states have developed similar programs; and

WHEREAS, the purpose of the YMCA's model legislature program is to enhance development of the American democratic system by enabling young people to prepare for moral and political leadership through training in the theory and practice of determining public policy; and

WHEREAS, the YMCA model legislatures held following previous legislative sessions have been successful events allowing numerous young North Dakotans to gain a better understanding of the legislative process; and

WHEREAS, having such a program continue in this state can provide a major vehicle to help young people to really know about and become interested in government and the citizen's role in it; and

WHEREAS, among the goals for youth involvement in such a program are the development of confidence in and dedication to the democratic process, the gaining of communications skills, the learning of accountability and respect for other's rights, and the application of moral and ethical valuation processes to public policymaking;

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

That the Fiftieth Legislative Assembly express its support for the YMCA model state legislature to be held on Friday and Saturday,

April 24-25, 1987, and on dates yet to be selected in 1988, in the House and Senate chambers of the State Capitol in Bismarck; and

BE IT FURTHER RESOLVED, that those members of the Senate and House who are requested to participate in the program make every effort to arrange their schedules to be able to do so, and that the staff of the Legislative Council and the Director of Institutions' office render such reasonable assistance as may be necessary to make the program a success.

Filed February 6, 1987

CHAPTER 885

SENATE CONCURRENT RESOLUTION NO. 4031
(Senators Mushik, Stenehem, J. Meyer)
(Representatives Kelly, J. DeMers, Kretschmar)

UNIFORM JUVENILE COURT ACT STUDY

A concurrent resolution directing the Legislative Council to study the Uniform Juvenile Court Act, child abuse and neglect laws, other state and federal laws, and current administrative rules and practices regarding the confidentiality, management, exchange, and use of records and information relating to services provided to minors.

WHEREAS, the Governor's Commission on Children and Adolescents at Risk assessed the need for a comprehensive and coordinated plan of effective delivery of quality services to minors within the human services and juvenile justice systems of the state through 22 public hearings that allowed citizens to express their concerns; and

WHEREAS, the commission heard testimony indicating that confidentiality laws at times create problems both in referral and research of information relating to services provided to minors; and

WHEREAS, the state's confidentiality laws were enacted to protect minors and should not be enforced in a manner that interrupts the treatment process or violates the civil rights of a minor;

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

That the Legislative Council study the Uniform Juvenile Court Act, child abuse and neglect laws, other state and federal laws, and current administrative rules and practices between the juvenile courts and other state departments, agencies, and institutions regarding the confidentiality of records, the flow and management of information contained in those records, and the exchange and use of records and information relating to services provided to minors; 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-first Legislative Assembly.

Filed March 19, 1987

CHAPTER 886

SENATE CONCURRENT RESOLUTION NO. 4032
(Senators Heigaard, Olson)
(Representatives Strinden, Mertens)

FOUNDERS DAY

A concurrent resolution designating May 14, 1989, as "Founders Day" to remember those citizens involved in creating the Constitution of North Dakota.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for recognizing the people responsible for creating, maintaining, and improving the governmental systems and laws we live by; and

WHEREAS, delegates to the first North Dakota Constitutional Convention were elected on May 14, 1889;

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

That May 14, 1989, is designated as "Founders Day" and the Governor is urged to issue a proclamation requesting people of the state to recognize and remember as may be most convenient and proper the citizens involved in the first Constitutional Convention of North Dakota, and other persons in the past 100 years involved in improving and maintaining state government systems and laws; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor.

Filed March 19, 1987

CHAPTER 887**SENATE CONCURRENT RESOLUTION NO. 4033
(Senators Heigaard, Olson)
(Representatives Strinden, Mertens)****CONSTITUTION DAY**

A concurrent resolution designating July 4, 1989, as "Constitution Day" to observe the creation of the Constitution of North Dakota.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for observance of significant events that shaped the history of North Dakota; and

WHEREAS, delegates to the first North Dakota Constitutional Convention convened at the State Capitol in Bismarck on July 4, 1889; and

WHEREAS, the Constitution of North Dakota continues to be the foundation upon which government operates;

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

That July 4, 1989, is designated as "Constitution Day" and the Governor is urged to issue a proclamation requesting people of the state to recognize and observe as may be most convenient and proper the 100th anniversary of the start of the convention which led to the creation of the Constitution of North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor.

Filed March 19, 1987

CHAPTER 888

SENATE CONCURRENT RESOLUTION NO. 4034
(Senators Heigaard, Olson)
(Representatives Strinden, Mertens)

GOVERNMENT DAY

A concurrent resolution designating February 22, 1989, as "Government Day" to observe and remember the day when the organizing of North Dakota state government was authorized to begin.

WHEREAS, the North Dakota Centennial will be celebrated in 1989; and

WHEREAS, the attainment of 100 years of statehood calls for greater awareness of those events that were significant to the transformation from Dakota Territory to State of North Dakota; and

WHEREAS, United States President Grover Cleveland signed the Enabling Act, allowing Dakota Territory to proceed with organizing for a state government on February 22, 1889;

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

That February 22, 1989, is designated as "Government Day" and the Governor is urged to issue a proclamation requesting people of the state to observe and remember as may be most convenient and proper the 100th anniversary of the beginning of the organizing process leading to statehood; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor.

Filed March 19, 1987

CHAPTER 889

SENATE CONCURRENT RESOLUTION NO. 4035 (Richard)

BRASSICA NAPUS

A concurrent resolution urging the Agriculture Stabilization and Conservation Service to approve Brassica napus as a cover crop on set aside acreage.

WHEREAS, Brassica napus, also known as rapeseed or canola, is a cultivated annual herb of the same genus as the mustard plant, which is allowed for planting as a cover crop on set aside acreage under regulations of the Agriculture Stabilization and Conservation Service; and

WHEREAS, Brassica napus is a winter-hardy biennial valued for the oil content of its seeds and provides valuable forage and nitrogenous fertilizer; and

WHEREAS, Brassica napus has desirable soil protection qualities and should be considered for addition to the list of cover crops which may be planted on set aside acreage;

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

That the Agriculture Stabilization and Conservation Service is hereby urged to approve planting of Brassica napus as a cover crop on set aside acreage under its jurisdiction in North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the North Dakota Agriculture Stabilization and Conservation Service Committee and the administrator of the Agriculture Stabilization and Conservation Service, the United States Department of Agriculture.

Filed March 16, 1987

CHAPTER 890

SENATE CONCURRENT RESOLUTION NO. 4036
(Senators Tallackson, Lips)
(Representatives Gerntholz, Nicholas)

NORTH DAKOTA HALL OF FAME

A concurrent resolution expressing the full support of the Fiftieth Legislative Assembly of North Dakota for the North Dakota Hall of Fame.

WHEREAS, North Dakota is extremely proud of its people; and

WHEREAS, the Legislative Assembly encourages and praises the excellence achieved by citizens of North Dakota; and

WHEREAS, there are many former and current North Dakotans who are worthy of ongoing recognition for their outstanding contributions in their fields; and

WHEREAS, many North Dakotans of national stature and recognition such as Lawrence Welk, Louis L'Amour, Angie Dickinson, Roger Maris, Peggy Lee, and Eric Sevareid have been inducted into the North Dakota Hall of Fame; and

WHEREAS, tourism is a priority in the economic and cultural growth of our great state;

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

That the Fiftieth Legislative Assembly expresses its full support for the North Dakota Hall of Fame and encourages all North Dakotans to do the same; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Mr. Gary C. Pearson, President of the North Dakota Hall of Fame.

Filed March 13, 1987

CHAPTER 891

SENATE CONCURRENT RESOLUTION NO. 4038
(Senators Waldera, Satrom, Stenehjem)
(Representative Kelly)

COMMITMENT PROCEDURES STUDY

A concurrent resolution directing the Legislative Council to study the judicial standard of a "person requiring treatment" as used in mental health commitment proceedings resulting in treatment programs other than hospitalization.

WHEREAS, the state's mental health commitment law presently requires the judicial system to determine in a treatment hearing whether a person subject to a petition for involuntary treatment meets the criteria of a "person requiring treatment"; and

WHEREAS, state law generally defines a "person requiring treatment" as a person who is suffering from severe mental illness, severe alcoholism, or severe drug addiction, or who is mentally ill, an alcoholic, or a drug addict, and there is a reasonable expectation that if the person is not hospitalized there exists a serious risk of harm to the person, to others, or to property; and

WHEREAS, no uniformity exists in the application of the criteria and standards used in determining whether a person is a "person requiring treatment" and the most appropriate mode of treatment for persons presenting mental health problems;

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

That the Legislative Council form a committee composed of legislators, mental health professionals, and other concerned citizens to study the judicial standard of a "person requiring treatment" as used in mental health commitment proceedings resulting in treatment programs other than hospitalization; 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-first Legislative Assembly.

Filed March 19, 1987

CHAPTER 892

SENATE CONCURRENT RESOLUTION NO. 4039
(Senator Langley)
(Representatives Starke, Klundt)

COLONEL BUCHLI

A concurrent resolution congratulating Colonel James Buchli and welcoming him on his upcoming visit to Bismarck.

WHEREAS, it is a custom of the Legislative Assembly to recognize and honor North Dakota citizens for their national accomplishments; and

WHEREAS, Colonel James Buchli was born in New Rockford, North Dakota, and grew up in Fargo, North Dakota, and served as a mission specialist on the January 1985 flight of the space shuttle Discovery; and

WHEREAS, Colonel Buchli will be visiting Bismarck, North Dakota, to present the state with memorabilia from the space shuttle Challenger; and

WHEREAS, Colonel Buchli will represent the National Aeronautics and Space Administration in presenting Governor George A. Sinner with a wooden plaque containing a likeness of the crew members and a miniature North Dakota flag that was recovered from the Challenger wreckage;

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

That the Fiftieth Legislative Assembly extends its heartiest congratulations to Colonel James Buchli on his recent accomplishments and welcomes him on his upcoming trip to Bismarck, North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to Colonel James Buchli.

Filed February 6, 1987

CHAPTER 893

SENATE CONCURRENT RESOLUTION NO. 4040

(Senators Heigaard; Olson; Redlin; Adams; Axtman; Bakewell; David; Dotzenrod; Freborg; Heinrich; Hilken; Holmberg; Ingstad; Keller; Kelly; Kelsh; Krauter; Langley; Lashkowitz; Lips; Lodoen; Maixner; Mathern; Maxson; D. Meyer; J. Meyer; W. Meyer; Moore; Mushik; Mutch; Naaden; Nalewaja; Nelson; Nething; Peterson; Reiten; Richard; Satrom; Schoenwald; Shea; Stenehjem; Streibel; Stromme; Tallackson; Tennefos; Thane; Todd; Tweten; Vosper; Waldera; Wogsland; Wright; Yockim)

(Representatives Strinden; Mertens; Kloubec; Aas; Almlie; Anderson; Belter; G. Berg; R. Berg; Brokaw; Christman; Cleveland; Dalrymple; J. DeMers; P. DeMers; Dorso; Dotzenrod; Enget; Flaagan; Frey; Gates; Gerntholz; Goetz; Gorman; Graba; Gunsch; Halmrast; Hamerlik; L. Hanson; O. Hanson; Haugen; Haugland; A. Hausauer; R. Hausauer; Hill; Hoffner; Hokana; Kelly; Kent; Kingsbury; Klundt; Knell; Knudson; Koland; Kolbo; Kretschmar; Kuchera; Lang; Larson; Laughlin; Lautenschlager; Linderman; Lindgren; Marks; Martin; Martinson; Melby; Meyer; Moore; Murphy; Myrdal; C. Nelson; J. Nelson; Nicholas; Nowatzki; Oban; O'Connell; D. Olsen; A. Olson; V. Olson; Opedahl; O'Shea; Payne; Peterson; Rice; Riehl; Rydell; Scherber; Schindler; Schneider; Shaft; Shaw; Shide; Shockman; Skjerven; Smette; Solberg; Sorensen; Starke; Stofferahn; Thompson; Tokach; Tollefson; Tomac; Trautman; Ulmer; Vander Vorst; Wald; Watne; Wentz; Whalen; Wilkie; A. Williams; C. Williams; W. Williams; Winkelman)

LIEUTENANT GOVERNOR MEIERS

A concurrent resolution expressing the deep appreciation and affection of the Fiftieth Legislative Assembly of North Dakota for Lieutenant Governor Ruth Meiers.

WHEREAS, in times that try the human spirit there are always among us individuals who by deed or spoken word inspire us and who exemplify the strength and resiliency often required of us if we are to attempt great things; and

WHEREAS, Ruth Meiers who has served this state and its citizens with dedication and high spirit as a member of the Legislative Assembly and who now serves as this state's first woman Lieutenant Governor is one such individual; and

WHEREAS, during the recent special session, a time of high tensions and difficult decisions, Lieutenant Governor Meiers, as President of the Senate, presided over this esteemed body with vigor and good humor; and

WHEREAS, during the trials of her present illness, Lieutenant Governor Meiers has, often with great humor, always with steadfast resolve, courageously continued her dedicated service to this state and its citizens; and

WHEREAS, Lieutenant Governor Meiers' courage, her vibrant love for this life, and her supreme confidence in her ability to persevere in the face of this present adversity are true inspirations to all members of this Legislative Assembly, to the citizens of this state, and to any person who may face similar trials;

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

That the Fiftieth Legislative Assembly expresses its deepest appreciation and warmest affection for Lieutenant Governor Ruth Meiers, and wishes her a rapid recovery so that she may soon again grace this body with her wit, charm, and considerable talents as a leader of this state and this Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to Lieutenant Governor Ruth Meiers.

Filed February 5, 1987

CHAPTER 894

SENATE CONCURRENT RESOLUTION NO. 4042
(Senators Lips, Tallackson, Stromme)
(Representatives Hoffner, Mertens, Martin)

INCURABLE DISEASE INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the life insurance needs of individuals born with incurable diseases.

WHEREAS, due to advances in medical science, many persons who would have formerly died during their youth from the pernicious effects of incurable diseases now live normal adult lives; and

WHEREAS, despite the incurable status of their disease, these persons are capable of being productive members of society; and

WHEREAS, it is possible to establish a pooled risk life insurance group program to provide life insurance to state residents who were born with incurable diseases; and

WHEREAS, with proper legislative support, an insurance program can help these persons and their families lead full, happy, and productive lives and thereby avoid becoming burdensome to the rest of society;

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

That the Legislative Council study the life insurance needs of persons born with incurable diseases; and

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

Filed March 25, 1987

CHAPTER 895

SENATE CONCURRENT RESOLUTION NO. 4043
(Wright, Reiten, Redlin)
(Approved by the Committee on Delayed Bills)

CENTENNIAL HIGHWAY U.S. 2

A concurrent resolution designating U.S. Highway 2 as a Centennial Highway.

WHEREAS, U.S. Highway 2, the northernmost east-west United States numbered highway, in its transcontinental journey from Houlten, Maine, to Everett, Washington, traverses the state of North Dakota from Grand Forks to Williston; and

WHEREAS, U.S. Highway 2 also traverses two other states that will be celebrating their centennial of admission to the Union in 1889, the same year as North Dakota, namely Washington and Montana; and

WHEREAS, through North Dakota, U.S. Highway 2 follows a course first traveled by prairie schooners, then the iron horse, and finally today's modern automobile; and

WHEREAS, U.S. Highway 2, which has been previously known as the Theodore Roosevelt International Highway, as well as the "Green Route," has been the primary east-west route across the northern part of this state since the earliest days of our statehood; and

WHEREAS, the attainment of 100 years of statehood calls for recognizing progress made on significant projects of economic benefit and public convenience; and

WHEREAS, U.S. Highway 2 is such a project, with four-laning of the 210 miles from Grand Forks to Minot almost complete, the 15-mile "missing link" between Rugby and Towner being scheduled for completion this year;

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

That U.S. Highway 2 is designated as a Centennial Highway in observance of 100 years of statehood for North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor and to the State Highway Commissioner.

Filed April 2, 1987

CHAPTER 896

SENATE CONCURRENT RESOLUTION NO. 4044
(Senator W. Meyer)
(Representative Nicholas)
(Approved by the Committee on Delayed Bills)

AGRICULTURAL ECONOMIC DIFFICULTIES

A concurrent resolution urging Congress to adopt positive, solution-oriented programs of assistance targeted to address agricultural economic difficulties.

WHEREAS, the agricultural sector continues to face the combined problems of weak export markets, competitive advantage difficulties, declining asset values, nonproductive debt, and lack of available credit at an affordable interest rate; and

WHEREAS, the prolonged difficulties have created a negative attitude, which hinders progressive actions to stimulate an agricultural sector turnaround; and

WHEREAS, burdensome world grain stockpiles continue to clog this country's prospects for a dramatic increase in export levels; and

WHEREAS, one-third of commercial farmers have two-thirds of the total debt of commercial farmers; and

WHEREAS, this substantial amount of debt is nonproductive and cannot be paid out of the earnings from assets; and

WHEREAS, federal budget cutbacks in agricultural programs are being proposed at a time when farm and ranch families are depending on the federal government for continued support in its commitment to aid in the transition that agriculture is going through; and

WHEREAS, the impact of farm economy difficulties greatly affects the overall well-being of rural families, communities, and the state of North Dakota as a whole;

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

That the Fiftieth Legislative Assembly urges the Congress of the United States to adopt positive, solution-oriented programs of

assistance targeted at addressing farm credit difficulties and to improve the Food Security Act of 1985 to provide improved returns to farm and ranch families, thereby reaffirming a commitment to a strong agrarian system of family farms and ranches; and

BE IT FURTHER RESOLVED, that Congress implement measures in the farm program to target government spending to full-time family farmers and ranchers and to also target a portion of this spending to deal with the debt crisis facing American agriculture; and

BE IT FURTHER RESOLVED, that Congress consider the impact on the agricultural sector of constant changes in farm program operation and federal farm policy changes; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the United States Secretary of Agriculture, the chairmen of the United States Senate and House Committees on Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed February 9, 1987

CHAPTER 897

SENATE CONCURRENT RESOLUTION NO. 4045 (Holmberg)

STUDY SCREENING STUDY

A concurrent resolution directing the Legislative Council to study the process of approving and ultimately prioritizing studies to be conducted by the Legislative Council.

WHEREAS, since 1979 the Legislative Council in order to maintain its workload within the limitations of time and legislative appropriations has screened and prioritized studies directed by concurrent resolutions approved by the Legislative Assembly; and

WHEREAS, in prioritizing its studies the Legislative Council reviews previous studies of the same or similar subject matter, the appropriateness of the legislative branch studying the issue rather than another entity, the potential of the study to resolve the problem involved, and the necessity of that study in relation to other studies that should be conducted; and

WHEREAS, under current procedures, the time taken during a legislative session to hear, discuss, and vote upon resolutions directing studies by the Legislative Council reduces the time available for consideration of other legislative matters which must be completed before adjournment of the Legislative Assembly;

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

That the Legislative Council study the entire process of determining which studies should be conducted by the Legislative Council during the interim, including methods of legislative review and approval of resolutions directing Legislative Council studies and prioritization of studies directed by resolution or bill; 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-first Legislative Assembly.

Filed March 13, 1987

CHAPTER 898

SENATE CONCURRENT RESOLUTION NO. 4046 (Krauter, Maixner)

GAME AND FISH LAWS STUDY

A concurrent resolution directing the Legislative Council to study the state's game and fish laws and rules, with an emphasis on the laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses.

WHEREAS, county auditors are directed by state law to issue game and fish licenses and may designate agents to issue such licenses; and

WHEREAS, county auditors retain a portion of game and fish license fees to meet administrative costs; and

WHEREAS, county auditors are personally liable for the receipts from game and fish licenses issued in that county; and

WHEREAS, the role of county auditors in the issuance of game and fish licenses should be reviewed to determine if changes in the applicable laws and rules should be made;

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

That the Legislative Council study the state's game and fish laws and rules, with an emphasis on those laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses; and

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

Filed March 25, 1987

CHAPTER 899

SENATE CONCURRENT RESOLUTION NO. 4048
(Senators Ingstad, Bakewell, D. Meyer)
(Representatives Cleveland, Lindgren)

RECREATION AND RESOURCE DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study the state's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources for the purpose of promoting tourism and economic development.

WHEREAS, the Legislative Assembly recognizes that North Dakota's bountiful natural resources and outdoor recreation opportunities act as an attraction to nonresidents who enter the state for the purpose of hunting, fishing, camping, and nature appreciation; and

WHEREAS, the Legislative Assembly recognizes that significant amounts of tourism dollars are generated in North Dakota directly as a result of existing natural resources in the state; and

WHEREAS, the Legislative Assembly recognizes the need for management and enhancement of natural resources to assure continued enjoyment by both citizens of North Dakota and visitors to the state; and

WHEREAS, the economic well-being of the state depends upon attracting nonresidents to the state, promoting tourism, and enhancing economic development within the state; and

WHEREAS, these resources could perhaps be more fully utilized to attract tourists to the state for the purpose of hunting, fishing, camping, and nature appreciation and to promote economic development within the state;

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

That the Legislative Council study the state's bountiful natural resources and outdoor recreation opportunities with an emphasis on the state's wildlife resources for the purpose of promoting tourism and economic development; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance and advice of the Attorney General, the State Game and Fish Commissioner, the director of the Economic Development Commission, and the director of the Tourism Division, in conducting this study; and

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

Filed March 13, 1987

CHAPTER 900

SENATE CONCURRENT RESOLUTION NO. 4051 (D. Meyer, Maixner, Nelson, Vosper)

STATE BONDING FUND STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded in order to engage in business activities.

WHEREAS, persons who are involved in the production of oil and coal, persons who operate grain warehouses or livestock auction markets, and persons who are involved in other types of business activities are required to obtain surety bonds as a prerequisite to conducting business in this state; and

WHEREAS, surety bonds at affordable rates are becoming increasingly difficult to obtain, and in some cases are difficult to find at any cost; and

WHEREAS, the North Dakota Insurance Reserve Fund was established and is successfully operating to assist political subdivisions that were having difficulty obtaining insurance at a reasonable premium to obtain insurance coverage; and

WHEREAS, a state bonding fund, financed by the industries involved, could provide affordable bond coverage while also providing adequate protection under the bonds;

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

That the Legislative Council study the feasibility and desirability of establishing a state bonding fund for those persons who are required by state law to be bonded in order to engage in business activities; 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-first Legislative Assembly.

Filed April 7, 1987

CHAPTER 901

SENATE CONCURRENT RESOLUTION NO. 4052
(Maixner)

RADON STUDY

A concurrent resolution directing the Legislative Council to study the health impact of indoor radon gas and radon progeny in homes and other buildings in North Dakota.

WHEREAS, radon is a gas which occurs naturally in varying concentrations in soils and rocks across the state; and

WHEREAS, it has been found and measured in a number of homes in North Dakota in concentrations above United States Environmental Protection Agency guidelines; and

WHEREAS, the radioactive decay products of radon have been shown to increase the risk of lung cancer; and

WHEREAS, the degree of risk to the citizens of North Dakota is unknown; and

WHEREAS, there is some scientific uncertainty as to the amount of health risk associated with radon and its decay products; and

WHEREAS, there are technical, scientific, legal, and program resource issues which need to be identified and addressed;

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

That the Legislative Council study the health-related, legal, and program resource issues related to radon gas and its decay products; and

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

Filed March 16, 1987

CHAPTER 902

SENATE CONCURRENT RESOLUTION NO. 4053 (Nelson, Naaden, Yockim)

SPECIAL FUND APPROPRIATION STUDY

A concurrent resolution directing the Legislative Council to study the appropriation of special funds.

WHEREAS, Article X, Section 12, of the Constitution of North Dakota provides that all public moneys from whatever source derived are to be deposited with the State Treasurer and, with certain exceptions, can only be paid out and disbursed pursuant to appropriation first made by the Legislative Assembly; and

WHEREAS, to meet constitutional requirements the courts have determined that appropriations must be specific in amount; and

WHEREAS, \$1.4 billion of special fund appropriations are recommended in the executive budget for the 1987-89 biennium; and

WHEREAS, the legislative reports to the public on expenditures approved by the Legislative Assembly are based on amounts appropriated; and

WHEREAS, the appropriation of special funds for some agencies creates hardships since revenues may be difficult to estimate; and

WHEREAS, in recent sessions the Legislative Assembly has been asked to make exceptions to the requirement for specific appropriations; and

WHEREAS, during the Fiftieth Legislative Assembly a number of state agencies and institutions have requested authority for the 1987-89 biennium to spend pursuant to Emergency Commission approval such additional moneys as may become available; and

WHEREAS, whenever appropriations are not specific in time and amount the Legislative Assembly's accuracy in reporting appropriations is diminished;

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

That the Legislative Council study the policy of appropriating special funds, the extent to which exceptions have been made to the practice of appropriating special funds, and the need to continue reporting special fund appropriations; 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-first Legislative Assembly.

Filed March 16, 1987

CHAPTER 903

SENATE CONCURRENT RESOLUTION NO. 4056 (Nothing)

GOVERNMENTAL SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the cost effectiveness and economic impact of governmental and intergovernmental services provided by state agencies, departments, and institutions, and alternative means of delivering those services.

WHEREAS, the sagging economic climate of the state and recent budgetary constraints necessitate an evaluation of the cost effectiveness of governmental and intergovernmental services presently provided by state agencies, departments, and institutions and the impact on state economic development resulting from the provision of those services by the state; and

WHEREAS, the lack of competition in the public sector provides less incentive to improve efficiency or available standards from which to gauge the true cost of providing state services than exists in the private sector; and

WHEREAS, alternative means of delivering state services may provide opportunities to reduce costs, eliminate duplication and inefficient management practices, develop better and more accountable systems, and improve service delivery; and

WHEREAS, several state and local governments have privatized many public services to varying degrees ranging from relatively distant involvement with the private sector, as in adopting management practices or establishing joint ventures between governments and the private sector, to actually placing the delivery of certain governmental services into the hands of the private sector; and

WHEREAS, the Fiftieth Legislative Assembly has received proposals to commence a license plate manufacturing plant at the State Penitentiary and to permit the State Highway Commissioner to engage in the business of erecting and maintaining signs; and

WHEREAS, many services provided by state agencies, departments, and institutions may be candidates for alternative

service delivery arrangements including state printing services, engineering and construction services, and the provision of office furnishings and other products to the state and others by Roughrider Industries at the State Penitentiary;

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

That the Legislative Council study the cost effectiveness and economic impact of governmental and intergovernmental services provided by state agencies, departments, and institutions, and alternative means of delivering those services; 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-first Legislative Assembly.

Filed March 16, 1987

CHAPTER 904

SENATE CONCURRENT RESOLUTION NO. 4057 (Nothing)

ALCOHOL OFFENSE ADMINISTRATIVE PENALTIES STUDY

A concurrent resolution directing the Legislative Council to study the administrative hearing and license suspension process for alcohol-related traffic offenses.

WHEREAS, in 1983 the Legislative Assembly significantly broadened the scope of administrative proceedings under the Implied Consent Act by enacting an administrative penalty for driving or being in actual physical control of a vehicle while having certain levels of blood alcohol concentration; and

WHEREAS, since 1983 there has been an average of 666 implied consent hearings each year, and an average of 156 appeals from those hearings to district courts each year; and

WHEREAS, the North Dakota Supreme Court has held that a driver's license is a protectable property interest to which the guarantee of procedural due process applies; and

WHEREAS, there are recurring issues concerning the propriety of admitting certain evidence, the methods of inquiry used by the hearing officers, the level of expertise exhibited by the hearing officers in applying legal and evidentiary principles, and whether due process safeguards are adequately preserved in the administrative hearing process;

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

That the Legislative Council study the current administrative hearing process as it applies to license suspensions for alcohol-related traffic offenses, with emphasis on the adequacy of due process protections, the expertise of the hearing officers, and the general effectiveness of the hearing process in achieving fair and equitable results; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 905

SENATE CONCURRENT RESOLUTION NO. 4058
(Senators Stromme, Thane)
(Representative Kingsbury)

CAPITAL CONSTRUCTION TRUST FUND

A concurrent resolution directing the Legislative Council to study alternative methods available for establishing a capital construction trust fund for the state.

WHEREAS, there will be a continued need in the state for new buildings; and

WHEREAS, the state cannot afford general fund appropriations for the construction of new buildings in times of economic depression; and

WHEREAS, there is currently no established source of funding dedicated for the construction of new facilities in the state; and

WHEREAS, the North Dakota Constitution prohibits unsecured deficit spending; and

WHEREAS, the state needs a structured plan for accumulating funds in a trust fund earmarked for the construction of new buildings in the state;

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

That the Legislative Council conduct a study on the need, feasibility, and alternatives available for establishing a capital construction trust fund for the state; and

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

Filed March 16, 1987

CHAPTER 906

SENATE CONCURRENT RESOLUTION NO. 4060 (Nothing)

SECURITIES LAWS STUDY

A concurrent resolution directing the Legislative Council to study the securities laws of North Dakota, the need for regulation of the various aspects of the securities business, and the desirability of revising the state's securities laws to foster legitimate capital formation in the state.

WHEREAS, although the primary jurisdiction over the sale of stocks, bonds, and other securities is held by the United States Securities and Exchange Commission, states have jurisdiction over the issuance and sale of securities within the states and may regulate certain aspects of the securities business; and

WHEREAS, in North Dakota the regulatory provisions of the Securities Act of 1951 were enacted to ensure that people receive relevant information about securities upon which they can base their investment decisions; to protect investors from securities that do not meet statutory standards; to prevent unqualified, unethical, and fraudulent persons from entering the securities business; and to supervise the activities of persons in the securities business; and

WHEREAS, abuses in the sale of insurance securities to the elderly, unscrupulous securities agents selling door-to-door or by mail advertisement, and other exploitative practices in the securities business reflect the need and importance for securities regulation to protect the unsophisticated investor; and

WHEREAS, a major obstacle to the development of business and employment opportunities in North Dakota is the unavailability of investment capital for new and expanding businesses; and

WHEREAS, the state's securities laws may impose excessive costs on persons who comply with the laws and in some instances may inhibit legitimate capital formation; and

WHEREAS, the state's securities laws should be structured to protect the public from fraud, deception, or the disposal of securities on unfair terms but not in an overly restrictive manner so as to inhibit legitimate capital formation in the state;

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

That the Legislative Council study the securities laws in this and other states, the need for regulation of the various aspects of the securities business, and the desirability of revising the Securities Act of 1951 to foster legitimate capital formation in the state in a manner that does not diminish necessary public protections; 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-first Legislative Assembly.

Filed March 25, 1987

CHAPTER 907**SENATE CONCURRENT RESOLUTION NO. 4062
(Redlin, Reiten)
(Approved by the Committee on Delayed Bills)****NATIONAL SPECIAL EDUCATOR OF THE YEAR**

A concurrent resolution congratulating Joan Bonsness on being named the National Special Educator of the Year.

WHEREAS, Joan Bonsness has been recognized nationally and in this state for her contributions as a teacher in the learning disabilities field; and

WHEREAS, Joan Bonsness has been teaching both regular and special education in the public schools in this state for over 23 years; and

WHEREAS, Joan Bonsness, as Northwest Education Project Director since 1974, educates teachers in this state, and has educated teachers in 32 other states about learning disabilities; and

WHEREAS, Joan Bonsness was named North Dakota Association for Children and Adults with Learning Disabilities Special Educator of the Year in September 1986 and was selected from over 24 national contestants as National Special Educator of the Year;

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

That the Fiftieth Legislative Assembly extends its sincere and hearty congratulations to Joan Bonsness of Minot, North Dakota, on being named National Special Educator of the Year; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Joan Bonsness.

Filed March 30, 1987

CHAPTER 908

SENATE CONCURRENT RESOLUTION NO. 4063
(Senator W. Meyer)
(Representative Nicholas)
(Approved by the Committee on Delayed Bills)

FOOD SECURITY ACT POLICIES

A concurrent resolution urging the Secretary of the United States Department of Agriculture to adopt regulations under the Food Security Act of 1985 which are consistent with the rapidly changing world market conditions.

WHEREAS, current government programs and the world economy have resulted in substantially lower prices for federal farm program and nonprogram crops, including sunflowers and other specialty crops; and

WHEREAS, farmers are forced to rely on federal farm program crops for adequate cash flow; and

WHEREAS, the present procedures of the United States Department of Agriculture for establishing base acres for federal farm program crops are highly inequitable to farmers who have diversified into nonprogram or specialty crops, including sunflowers; and

WHEREAS, those farmers with low established bases for federal farm program crops realize reduced cash flows and lowered real estate values;

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

That the Fiftieth Legislative Assembly urges the Secretary of the United States Department of Agriculture to adopt policies under the Food Security Act of 1985 which recognize rapidly changing world market conditions; and

BE IT FURTHER RESOLVED, that any policies adopted allow farmers who have diversified into nonprogram crops, including sunflowers and other specialty crops, to receive one or more of the following options:

1. To participate in the farm programs by planting program crops on nonprogram acres.
2. To receive a direct per-acre deficiency payment on nonprogram acres.
3. To change crop production history by the elimination of limited cross-compliance requirements.
4. To appeal to county USDA-ASCS boards when a farmer's program base acre allotments are not representative of the farmer's long-term production history.
5. To receive equitable treatment if that farmer has diversified into nonprogram crops, including sunflowers and other specialty crops, so that farmers who diversify will not be penalized by being denied program benefits; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Agriculture of the United States Department of Agriculture, the chairmen of the United States Senate and House Committees on Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 30, 1987

CHAPTER 909

SENATE CONCURRENT RESOLUTION NO. 4064
(Senator Tallackson)
(Representatives Kingsbury, Skjerven)
(Approved by the Committee on Delayed Bills)

JUNIOR MEN'S CURLING CHAMPIONS

A concurrent resolution congratulating the members of the Darren Kress rink of Grafton on winning the National Junior Men's Curling Championship and advancing to international competition.

WHEREAS, the Darren Kress rink of Grafton, composed of Darren Kress, Connor Oihus, Duane McGregor, and Brett Davis, defeated Nebraska to advance to semifinal competition in the National Junior Men's Curling Championship; and

WHEREAS, the Kress rink defeated Illinois in the semifinal round and dominated in the finals, defeating Wisconsin 9-2 to capture the National Junior Men's Curling Championship; and

WHEREAS, the Kress rink has successfully advanced to international competition and will compete and represent North Dakota in the upcoming World Junior Men's Curling Tournament held in Victoria, British Columbia, March 15-21, 1987; and

WHEREAS, the Kress rink's victories and participation in world competition are achievements of which the rink members and all North Dakotans can be justifiably proud;

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

That the Fiftieth Legislative Assembly extends its heartiest congratulations to the members of the Darren Kress rink on capturing the National Junior Men's Championship and wishes these skilled athletes and superb curlers great success in their upcoming international competition; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to rink members Darren Kress, Connor Oihus, Duane McGregor, and Brett Davis.

Filed March 13, 1987

CHAPTER 910

SENATE CONCURRENT RESOLUTION NO. 4065

(Maixner)

(Approved by the Committee on Delayed Bills)

URANIUM PROCESSING FACILITIES STUDY

A concurrent resolution directing the Legislative Council to study remedial action on two inactive uranium processing facilities in North Dakota.

WHEREAS, Congress passed an act entitled the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978; and

WHEREAS, in the 1960s uranium was mined and processed in North Dakota; and

WHEREAS, the UMTRCA provides for the safe stabilization, disposal, and control of uranium mill tailings and other residual radioactive material located at designated inactive uranium processing sites; and

WHEREAS, in North Dakota two inactive uranium processing sites have been designated by the United States Department of Energy for remedial action; and

WHEREAS, a substantial cost is potentially involved in these remedial actions with current estimates at approximately \$7,200,000 with costs to be spread over possibly three bienniums; and

WHEREAS, ninety percent of the funding for the remedial action will be supplied through the United States Department of Energy with the remaining ten percent supplied by the state of North Dakota; and

WHEREAS, the State Department of Health has entered into a cooperative agreement with the United States Department of Energy to establish a plan of remedial action to acquire property and to formally commit the United States Department of Energy and the state to the undertaking of their respective statutory responsibilities under UMTRCA; and

WHEREAS, difficult financial problems are now facing the state;

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

That the Legislative Council study and review the progress to date on these proposed remedial actions and evaluate funding resources to meet the state's share of these projects; and

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

Filed March 25, 1987

CHAPTER 911

SENATE CONCURRENT RESOLUTION NO. 4066
(Senators Mathern, Satrom, Yockim)
(Representatives Hokana, Lindgren)
(Approved by the Committee on Delayed Bills)

POLITICAL SUBDIVISIONS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of changes in the legal status of, and relationships existing among, political subdivisions and the effect of new legislation on county and city budgets.

WHEREAS, we are about to celebrate the 100th anniversary of our state constitution and political subdivision structures; and

WHEREAS, changes in modes of transportation and methods of communication, shifting population centers, and the need to efficiently provide governmental services underscore the need to reassess the legal status of, and relationship existing among, political subdivisions, and to determine whether certain functions are or may be shared; and

WHEREAS, laws enacted by the legislative assembly which fiscally impact counties and cities often take effect in the middle of a fiscal year without special legislative provision and thorough study of this situation is necessary to assure that county and city budgets already in place are not adversely affected by new laws; and

WHEREAS, current governmental structures may require revision to ensure that the demands of our changing society are met and to achieve cost savings in governmental expenditures;

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

That the Legislative Council study the feasibility and desirability of changes in the legal status of, and relationship existing among, political subdivisions, and determine whether certain functions are or may be shared, whether the arrangement of political subdivisions may be rationally adapted to ensure the optimum provision of governmental services in a cost-effective manner, and whether constitutional, geographical, or other barriers to such adaptations exist; and

BE IT FURTHER RESOLVED, that the emphasis of the study be on law enforcement services such as courts, police, correction facilities, and safety programs and measures, governmental administration, transportation systems (particularly roads), parks and recreation facilities, health services, and economic development; and

BE IT FURTHER RESOLVED, that attention be given in the study to the time of taking effect of legislation that fiscally impacts counties or cities; 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-first Legislative Assembly.

Filed April 9, 1987

CHAPTER 912

SENATE CONCURRENT RESOLUTION NO. 4067
(Senators Satrom, Waldera, Mushik, Lips)
(Representative Kingsbury)
(Approved by the Committee on Delayed Bills)

RAILROAD RIGHT OF WAY TENANTS STUDY

A concurrent resolution directing the Legislative Council to study the relationship between railroads and their tenants along railroad rights of way.

WHEREAS, under North Dakota Century Code Chapter 60-06, as amended by 1987 House Bill No. 1347, warehouses and elevators for the storage of grain and potatoes may be placed along railroad rights of way and sidings, with the warehouse or elevator operator being required to pay rent to the railroad for that privilege; and

WHEREAS, under Chapter 60-06, as amended by House Bill No. 1347, the Public Service Commission is responsible for determining the rent payable to the railroad; and

WHEREAS, testimony on 1987 House Bill No. 1347 indicated that rent has increased on some of these properties on the order of 170 percent over the last 10 years; and

WHEREAS, the issue of rental rates charged for use of railroad properties is not limited to country sidings, but has direct application to Main Street businesses in most cities of this state, because those businesses along the railroad right of way are also subject to the risk of rent increases and lack of availability of long-term leases, thus hindering long-range planning of business operations; and

WHEREAS, the principles that impelled the adoption of what is now North Dakota Century Code Chapter 60-06 may have equally valid application to railroad property leased by Main Street businesses;

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

That the Legislative Council study the present relationship between railroads and their tenants under North Dakota Century Code Chapter 60-06 and the similarities between that relationship and the relationship between railroads and their tenants along other rights of way not governed by that Chapter, including a consideration of whether rights concerning establishment of tenancies should include railroad rights of ways in cities; 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-first Legislative Assembly.

CHAPTER 913

SENATE CONCURRENT RESOLUTION NO. 4068
(Senators Peterson, Nalewaja, Tennefos, Mathern, Lashkowitz)
(Representatives Moore, Scherber, R. Berg, C. Nelson, Dorso,
Gorman, Kloubec, Payne, Kelly, Schneider)
(Approved by the Committee on Delayed Bills)

BISON CLUB HOCKEY TEAM

A concurrent resolution congratulating the North Dakota State University Bison Club hockey team for winning the 1987 National Collegiate Club Hockey Tournament held at Fargo, North Dakota.

WHEREAS, the North Dakota State University Bison Club hockey team has completed its first three full seasons of collegiate competition by winning its third consecutive national championship; and

WHEREAS, the North Dakota State University Bison Club hockey team won the 1987 National Collegiate Club Hockey Tournament in a thrilling three overtime victory in the championship game against the University of Arizona on March 15, 1987; and

WHEREAS, the Bison Club hockey team, coaches, advisor, contributors, students, boosters, and fans have all contributed to making collegiate hockey at North Dakota State University a huge success in the first three full years of competition; and

WHEREAS, the team's outstanding accomplishments and national championships are accomplishments of which all North Dakotans can be justifiably proud;

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

That the Fiftieth Legislative Assembly takes great pride and pleasure in extending its congratulations to the North Dakota State University Bison Club hockey team and their coach, Dave Morinville; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the administration at North Dakota State University, to the North Dakota State University Bison Hockey Club and team members, and to head coach Dave Morinville.

Filed March 30, 1987

CHAPTER 914

SENATE CONCURRENT RESOLUTION NO. 4069
(Senators Wogsland, Thane)
(Representatives Flaagan, Laughlin, Myrdal)
(Approved by the Committee on Delayed Bills)

FIRE DISTRICT AID STUDY

A concurrent resolution directing the Legislative Council to study state aid to local fire departments and districts.

WHEREAS, the efficient and capable delivery of fire protection services to this state's citizens is a goal of the Legislative Assembly; and

WHEREAS, an adequate and equitable system for determining state aid to help finance the cost of local fire protection is critical to the needs of this state's citizens and the protection of their property; and

WHEREAS, state aid distributed to local fire departments and districts is appropriated from the reserves of the state fire and tornado fund; and

WHEREAS, the reserves of the state fire and tornado fund may not be adequate to fund this program in the future;

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

That the Legislative Council study the method of providing state aid to local fire departments and districts and determine what, if any, changes should be made; 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-first Legislative Assembly.

Filed April 15, 1987

CHAPTER 915

SENATE CONCURRENT RESOLUTION NO. 4070
(Senators Heigaard, Olson)
(Representatives Strinden, Mertens)
(Approved by the Committee on Delayed Bills)

DOCTOR OF THE DAY PROGRAM

A concurrent resolution expressing the thanks and appreciation of the Fiftieth Legislative Assembly to the North Dakota Medical Association Doctor of the Day Program.

WHEREAS, many practicing physicians from throughout the state, as well as resident physicians from the University of North Dakota School of Medicine Family Medicine and Internal Medicine Residency programs in Minot, Grand Forks, Fargo, and Bismarck, have volunteered their services as the Doctor of the Day during the Fiftieth Legislative Session; and

WHEREAS, many legislators, legislative employees, family members, lobbyists, and visitors to the Capitol have received treatment, counseling, and medications at no charge; and

WHEREAS, the North Dakota Medical Association, the North Dakota State Board of Pharmacy, the Bismarck Family Practice Center, the Bismarck Pharmacy, and the State Health Department have all provided services, equipment, or supplies to the Doctor of the Day medical services room;

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

That thanks and appreciation be expressed to the physicians and health care groups who have volunteered their professional services, expertise, supplies, and equipment in the operation of the 1987 North Dakota Medical Association Doctor of the Day Program.

Filed April 8, 1987

SENATE MEMORIAL RESOLUTION

CHAPTER 916

SENATE MEMORIAL RESOLUTION NO. 1
(Committee on Memorial Resolutions)

DECEASED SENATE MEMBERS MEMORIALIZED

A concurrent resolution A memorial resolution for deceased members of the Senate of the State of North Dakota.

WHEREAS, God in His wisdom has seen fit to summon to eternal rest His servants and our former colleagues:

Edwin C. Becker, who served in the 36th through the 41st Legislative Assemblies, from the 6th District, died October 14, 1985.

Leonard A. Bopp, who served in the 37th through the 39th Legislative Assemblies, from the 13th District, died November 5, 1986.

Jan Dykshoorn, who served in the 47th and 48th Legislative Assemblies, from the 34th District, died September 26, 1985.

Edward Haag, who served in the 32nd and 33rd Legislative Assemblies, from the 36th District, died June 27, 1986.

Ruth Meiers, who served as Lieutenant Governor and President of the Senate in the 49th and 50th Legislative Assemblies, died March 19, 1987.

George H. Saumur, who served in the 35th through the 39th Legislative Assemblies, from the 6th District, died December 21, 1986.

Eugene "Bud" Tuff, who served in the 34th and 35th, and the 38th and 39th Legislative Assemblies, from the 42nd District, died February 17, 1986.

Milton R. Young, who served in the 24th through the 29th Legislative Assemblies, from the 24th District, died May 31, 1983.

WHEREAS, today, we, as members of the Senate of the 50th Legislative Assembly of the State of North Dakota, pause to mourn

the passing of our former colleagues, and to honor their memories; and

WHEREAS, these colleagues rendered outstanding service to the people of the state by their contribution to their fellowmen and their communities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA:

That we express our keen sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of these, our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that duly enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased colleagues.

Filed April 6, 1987